Supreme Court, U.S.
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No. 01-

IN THE
Supreme Court of the United States

LAKE CHARLES PILOTS, INC.,

Petitioner,

v.

HUBERN DOXEY,

Respondent.

On Petition for Writ of Certiorari to the Supreme Court of Louisiana

PETITION FOR WRIT OF CERTIORARI

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64 pp

QUESTIONS PRESENTED FOR REVIEW

I.

Whether punitive damages are available under the general maritime law to a non-seaman.

II.

Alternatively, whether punitive damages are available to a non-seaman who claims only property damage and mental anguish resulting from property damage claims.

III.

Whether punitive damages are available to a person who is not claiming to be a seaman under the Jones Act, nor making a claim under the Death on the High Seas Act, but is seeking relief under the Admiralty Extension Act.

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

The Petitioner is Lake Charles Pilots, Inc., which has no parent corporation(s) and none of its corporate stock is owned by a publically held company. Hubern Doxey, a Louisiana resident, is the only other party to this proceeding.

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OPINIONS BELOW

The original opinion of the Louisiana Third Circuit Court of Appeal (App. E) is reported at 767 So.2d 701 (2000). The opinion of the Louisiana Third Circuit Court of Appeal is reported at 781 So.2d 701 (2001) (App. B). The denial of a writ of certiorari by the Louisiana Supreme Court is reported at 2001 WL 501793 (2001) (App. A).

JURISDICTION

The Louisiana Supreme Court entered its denial of a writ of certiorari on May 4, 2001. The jurisdiction of this Court is proper under 28 U.S.C. § 1257 and Rule 13 of the United States Supreme Court.

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

This matter involves the General Maritime Law, which this Court has jurisdiction over pursuant to Art. III, Section 2, Clause 1 of the United States Constitution.

STATEMENT OF THE CASE

This matter was commenced by Hubern Doxey ("Doxey") with a Petition for Damages filed October 12, 1999, in the 39th Louisiana Judicial District Court. The Petition avers in Paragraph 13 that: "Therefore, there is admiralty jurisdiction under the Admiralty Extension Act, 46 U.S.C. § 740." (Emphasis supplied). The Defendant, Lake Charles Pilots, Inc. ("Pilots") filed an answer alleging that pursuant to Louisiana Code of Civil Procedure Article 1732 that Doxey is not entitled to a Jury Trial. Doxey, in response, filed a Motion For Order of Jury Trial. The Motion For Order of Jury Trial was heard by the trial court on February 14, 2000. Ruling from the bench, the trial court, denied the Motion for Order of Jury Trial, based upon the testimony of Doxey that, excluding punitive damages, his general damages did not exceed $25,000, which is less than the $50,000 minimum required by Louisiana law. The Order

was signed by the trial court March 15, 2000. Doxey filed a writ application to the Louisiana Third Circuit Court of Appeals on April 17, 2000. On May 17, 2000, the Louisiana Third Circuit granted Doxey's writ and reversed the trial court without oral argument or briefing, stating that "the trial court erred in ruling that the plaintiff-relator could not meet the jurisdiction limit for a jury trial on the grounds that punitive damages are unavailable under general maritime law. See *Strawder v. Zapata Haynie Corp.*, 94-453, 94-454 (La. App. 3 Cir. 11/2/94); 649 So.2d 554. As such, we reverse the ruling of the trial court and remand the case for further proceedings consistent with this order", (App. E) granting a jury trial based upon the availability of punitive damages under the general Maritime Law. On September 15, 2000, the Louisiana Supreme Court granted the Pilots' writ application from the decision of the Louisiana Third Circuit and peremptorily remanded the matter to the Louisiana Court of Appeal for briefing, argument and opinion. After briefing and oral argument by the parties, on February 1, 2001 the Louisiana Third Circuit Court of Appeals affirmed its previous decision in a written opinion. (App. B) On May 4, 2001, the Louisiana Supreme Court denied the Pilots' Writ of Certiorari. (App. A)

ASSIGNMENT OF ERROR

The Louisiana Third Circuit Court of Appeals erred in ruling that after *Miles v. Apex Marine Corp.*, 498 U.S. 19, 111 S.Ct. 317, 112 L.Ed.2d 275, 59 USLW 4881, 1991 A.M.C. 1, (1990) a non-seaman is entitled punitive damages under general maritime law, citing *CEH, Inc. v. F/V Seafarer*, 70 F.3d 694 (1st Cir. 1995); *In re Horizon Cruises Litigation*, 101 F.Supp. 202 (S.D.N.Y. 2000) and; *Liner v. Dravo Basic Materials Co.*, 2000 WL 1693678 (E.D. La. Nov. 7, 2000).

SUMMARY OF ARGUMENT

Maritime claims may be brought in state courts pursuant to the "Savings to Suitors" clause of the Judiciary Act of 1789. U.S. Const. Art. III, Section 2; 28 U.S.C. § 1333. See *Green v. Industrial Helicopters, Inc.*, 593 So.2d 634, 637 (La. 1992) *cert. denied sub nom. Industrial Helicopters, Inc. v. Green*, 506 U.S. 819, 113 S.Ct. 65, 121 L.Ed.2d 32 (1992). Although the Louisiana First and Third Circuit Courts of Appeal have allowed punitive damages under general maritime law in decisions after *Miles*, *infra* this result is contrary to the great weight of authority in the Federal Courts and Louisiana State Courts. This Court should resolve the conflict between the Federal Courts of Appeal and numerous state courts by holding that punitive damages are not allowed under general maritime law to a non-seaman plaintiff, and thereby, resolve an important issue of general maritime law which is presently subject to great conflict among state and federal courts.

Significant Unresolved Issue of Law. In the aftermath of *Miles v. Apex Marine Corp.*, 498 U.S. 19, 111 S.Ct. 317, 112 L.Ed.2d 275, 59 USLW 4881, 1991 A.M.C. 1, (1990) the law is clear that neither Jones Act claims nor Death on the High Seas Act (DOHSA) claims, allow recovery of non-pecuniary claims including punitive damages. Punitive damages for failure to pay maintenance and cure have been disallowed in *Crane v. Diamond Offshore Drilling, Inc.*, *supra*, citing *Guevara v. Maritime Overseas Corp.*, 59 F.3d 1496 (5th Cir. 1995) cert denied 516 U.S. 1046, 116 S.Ct. 706, 133 L. Ed.2d 662 (1996).

Therefore, the unresolved question placed squarely before this Court by this case, is whether a non-seaman bringing a claim under General Maritime Law pursuant to the Admiralty Extension Act may recover non-pecuniary damages, specifically including punitive damages. The federal circuits

addressing a broader issue are in conflict, and no case with these particular facts is reported. The allowance of punitive damages in a case such as this, coupled with the recent amendment to La. C.C.P. Art. 1732 (allowing jury trials in admiralty matters), could produce a significant rise in the numbers of jury trials for Louisiana state district courts. Under the rationale of the Louisiana Third Circuit, any claimant could seek a jury trial no matter how nominal the damages simply by alleging punitive damages. The conflict between the Louisiana Courts of Appeals and the Federal Courts of Appeals (not to mention numerous federal district courts), and the direct effect of the conflict on availability of jury trials in certain state court cases arising under General Maritime Law, are issues worthy of this Court's consideration.

The primary issue herein is the right of Doxey, a non-seaman, to recover punitive damages in a case brought under the Admiralty Extension Act in state court, presumably pursuant to the "savings to suitors" clause, for property damage to a truck allegedly swamped at a boat launch by a passing ship, and for mental anguish and punitive damages. Doxey makes no claim for personal injury to himself or any other person. Doxey seeks a jury trial pursuant to La.C.C.P. Art. 1732(1) alleging that although his compensatory damages do not exceed $25,000, his punitive damages claim exceeds the $50,000.00 jury trial requirement of C.C.P. Art. 1732. The record is clear that absent the claim to punitive damages, Mr. Doxey is not entitled to a jury trial. Doxey's claim of punitive damages and the Louisiana Third Circuit decision allowing Doxey's claim for punitive damages brings clearly into focus the conflict among the Louisiana state courts and Federal circuits as to the availability of punitive damages under the General Maritime Law.

I. PUNITIVE DAMAGES ARE NOT AVAILABLE FOR GENERAL MARITIME LAW CLAIMS

Doxey's Third Circuit Writ application and the Third Circuit Opinion cited several Louisiana cases and several federal cases, arising after *Miles v. Apex Marine Corp.*, 498 U.S. 19, 111 S.Ct. 317, 112 L.Ed.2d 275, 59 USLW 4881, 1991 A.M.C. 1, (1990) for the proposition that after *Miles*, punitive damages are still available under general maritime law. In 1994, the Louisiana Third Circuit in *Strawder v. Zapata Haynie Corp.*, 94-453 (La. App. 3 Cir. 11/2/94); 649 So.2d 554, reversed a partial summary judgment denying punitive damages relying upon *Duplantis v. Texaco, Inc.*, 771 F.Supp. 787 (E.D. La.1991). In *Butler v. Zapata Haynie Corp.*, 92-71 (La. App. 3 Cir. 3/23/94); 633 So.2d 1274, a panel of the Third Circuit disagreed with a different panel in *Gray v. Texaco, Inc.*, 610 So.2d 1090 (La. App. 3 Cir. 1992), *writ denied*, 616 So.2d 686 (La. 1993) which disallowed punitive damages on a post *Miles* maintenance and cure claim. The *Butler* panel relied in part on *Duplantis*. However, for the reasons stated hereafter, *Duplantis*, no longer provides a foundation to allow punitive damages, and, thus, *Strawder* is without any legal underpinning.

The Louisiana Third Circuit Court of Appeals, apparently realizing its decision in *Strawder*, supra was based upon *Duplantis*, supra, which has now been effectively overruled by the Fifth Federal Circuit Court of Appeals decision in *Guevara*, infra, sought a different rationale. Instead the Third Circuit seeks to support its decision on *CEH, Inc.*, supra, which the Louisiana Fourth Circuit rejected in *Brodtman v. Duke*, supra, with writs denied by this Court and with Certiorari denied by the United States Supreme Court. Additional support comes from Judge Carl Barbier's decision in *Liner v. Dravo Basic Materials Co.*, supra. While there are not many reported Eastern District decisions on this issue, it seems apparent that

the majority view would disallow recovery for punitive damages under the general maritime law in the Eastern District of Louisiana.[1] In fact in addressing this issue in *Frazier v. Callais & Sons, Inc.*, 1999 WL 717666 (E.D. La.) Judge Vance stated:

> A majority of district court judges in this district, however, have held that punitive damages are non pecuniary damages unavailable under general maritime law *See, e.g. Hayden v. Acadian Gas Pipeline Syst., TXO, 1997 WL 382059* at (E.D. La. Jul. 9, 1997) (holding that after *Miles*, plaintiff may not recover punitive damages under general maritime law) (Vance, J.); *Williams v. Texaco, Inc.*, 1997 WL 250009 (E.D. La. May 8, 1997) (same) (Livaudais, J.; *Anderson v. Texaco, Inc.*, 797 F.Supp. 531, 536 (E.D. La. 1992) (same) (Feldman, J.) *see also Wahlstrom v. Kawasaki Heavy Indus., Lt* 4 F.3d 1084, 1094 (2d Cir.

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[1] *In re Waterman Steamship Corp.*, 780 F. Supp. 1093 (E.D. La. 1992) (Sear, J.); *Anderson v. Texaco, Inc.*, 797 F. Supp. 531 (E.D. La. 1992) (Feldman, J.); *Donaghey v. Ocean Drilling & Exploration Co.*, 1992 AMC 528 (E.D. La. 1991) (Livaudais, J.); *Baker v. Wilrig (U.S.A.), Inc.*, 1992 WL 236926 (E.D. La. 1992) (McNamara, J.); *Howard v. Atlantic Pacific Marine Corp.*, 1992 WL 55487 (E.D. La. 1992) (Clement, J.); *Stoufflet v. Apex Tolling Co.*, 1991 WL 194759 (E.D. La. 1991) (Livaudais, J.); *Brumfield v. Zapata Gulf Marine Corp.*, 1991 WL 174818 (E.D. La. 1991) (Mentz, J.); *Rowan Companies, Inc. v. Badeaux*, 1991 WL 175541 (E.D. La. 1991) (Livaudais, J.); *ODECO, Inc. v. Cornish*, 1991 WL 148746 (Livaudais, J.); *Logue v. Tidewater, Inc.*, 1992 WL 59409 (E.D. La. 1992) (Wicker, J.); *Hannon v. Waterman Steamship Corp.*, 1991 WL 278996 (E.D. La. 1991) (Wynne, M.); *Davis v. Penrod Drilling Corp.*, 1991 WL 264541 (E.D. La. 1991) (Heebe, J.) and *Anderson v. Texaco, Inc.*, 797 F. Supp. 531, Judge Feldman; *Hayden Acadian Gas Pipeline System*, 1997 WL 382059 (E.D. La. 1997) (Vance, J.); *Williams v. Texaco*, 1997 WL 250009 (E.D. La. 1997) (Livaudais, J.); *Rutherford v. Mallard Bay Drilling, L.L.C.*, 2000 WL 805230 (E.D. La. 2000) (Vance, J.); *In re: Complaint of L.L.P. & D. Marine Inc.*, 1997 (WL 772819 (E.D. La. 1997) (Clement, J.); *Donoghey v. Ocean Drilling and Exploration Company*, 1991 WL 99490 (E.D. La. 1991) (Livaudais, J.); *Tate v. Zapata Gulf Marine Construction*, 332 WL 346190 (E.D. La. 1993) (Clement, J.); and *Bardwell v. George G. Sharp, Inc.*, 1995 WL 517120 (E.D. La. 1995) (Fallon, J.).

> 1993) (agreeing that plaintiffs who are not allowed by general maritime law to seek nonpecuniary damages for loss of society should also be barred from seeking nonpecuniary punitive damages.

Clearly, however, courts have struggled with the effect of *Miles* on nonpecuniary and especially punitive damages. See Force, *The Curse of Miles v. Apex Marine Corp.:* THE MISCHIEF SEEKING "UNIFORMITY" AND "LEGISLATIVE INTENT" IN MARITIME PERSONAL INJURY CASES, 55 La. L Rev. 745 (1995); and Robertson, PUNITIVE DAMAGES IN AMERICAN MARITIME LAW 28 J. Mar. L. Com. 73 (1997).

Admittedly these are a factually diverse group of cases, however, there seems to be no differentiation for the interplay of Jones Act, DOHSA, or Longshoremen & Harbor worker claims. In *Hayden v. Acadian Gas Pipeline Systems TXO*, 1997 WL 382059 (E.D. La.), the Plaintiffs were boat owners seeking damages for striking a submerged, unmarked and undetectable bulkhead. Judge Vance granted a FRCP 12(b)(c) motion striking punitive damages stating:

> This Court finds that the clear import of *Miles* and its progeny is that the only damages recoverable under the general maritime law are pecuniary losses. As punitive damages are not pecuniary losses, they are not recoverable post-*Miles* under the general maritime law. See *Williams*, 11997 WL 250009 at *1; *Anderson v. Texaco, Inc.*, 797 F.Supp. 531, 536 (Feldman, J.) (E.D. La. 1992); *In re Waterman S.S. Corporation*, 780 F.Supp. 1093, 1095 (Sear, J.) (E.D. La. 1992); *Bridgett v. Odeco, Inc.*, 646 So.2d 1249, 1252 (La.App. 4th Cir. 1994).

Several recent decisions have cast a deadly pall on punitive damages in maritime actions. In *In re: Diamond B Marine Services, Inc.*, 2000 WL 222847 (E.D. La.)(Feb. 23, 2000),

Judge Schwartz, addressing a motion to amend to assert punitive damages, thoroughly analyzed the state of the law, as it relates to punitive damages under general maritime law:

> The Court denies claimants' Motion to Amend in these consolidated admiralty cases because as the opposition memoranda accurately points out, such amendment would be futile -- that is, with the death of *Merry Shipping*, supra, there is no longer any authority in the Fifth Circuit for an award of punitive damages under the general maritime law. It follows then that no injustice will result from the denial of the claimants' motion to amend.
>
> * * *
>
> The status of the law of the Fifth Circuit post-*Miles* and post-*Guevara* is that because punitive damages do not compensate pecuniary losses, they are not recoverable under the general maritime law, whether sought by a seaman against his employer or a non-seaman. A fair reading of the mile markers discussed below support this Court's conclusion that the amendment to add claims for punitive damages would be futile in this classic admiralty ship collision case.
>
> Beginning with *Miles v. Apex Marine Corp.*, 111 S.Ct. 317 (1990), the Supreme Court held that "loss-of-society" damages, a form of nonpecuniary damages, are not wrongful death of a seaman. Citing *Miles*' uniformity principle, the Fifth Circuit denied punitive damages to an injured seaman in *Guevara*, noting that punitive damages are considered nonpecuniary. *Guevara*, 59 F.3d at 1505.
>
> The *Guevara* court recognized that *Miles* effectively overruled *Dyer v. Merry Shipping Co.*, 650 F.2d 622

(5th Cir.1981), which was the legal foundation for all punitive damage claims under the general maritime law in Fifth Circuit, stating: "After *Miles*, it is clear that *Merry Shipping* has been effectively overruled." *Guevara*, 59 F.3d at 1507. The Fifth Circuit explained that the analysis it relied upon in *Merry Shipping* has been significantly undermined, to-wit:

> In reaching our holding in *Merry Shipping* -- that punitive damages are available in a wrongful death action brought by the representative of a seaman under the unseaworthiness doctrine of the general maritime law -- we relied on a key proposition: 'It does not follow ... that if punitive damages are not allowed under the Jones Act, they should also not be allowed under the general maritime law.' *Merry Shipping*, 650 F.2d at 626 .... [W]e now view this proposition as problematic...
>
> *Guevara*, 59 F.3d at 1504.

In *Walker v. Braus*, 995 F.2d 77 (5th Cir.1993), the Fifth Circuit spoke to the issue of whether nonpecuniary damages (i.e., consortium damages) were recoverable by a fishing vessel operator, who was neither a seaman nor a longshoreman. The *Walker* court, consisting of Judges Garza, Higginbotham and DeMoss, opined:

> The Supreme Court has clearly indicated its desire to achieve uniformity of damage recoveries in the exercise of admiralty jurisdiction. Allowing Trahan to recover loss of consortium damages would directly contradict the policy of uniformity

> emphasized and relied on by the Court in *Miles*; and without expressly so deciding at this time; we acknowledge the strength of the argument that damages for loss of society may no longer be permitted in a general maritime wrongful death action involving the operator of a fishing boat. Id. at 82.[4]
>
> [4] Noting the "trend" in the Fifth Circuit, on remand, the district judge in *Walker v. Braus*, 861 F.Supp. 527, 538 (E.D.La. 1994). The *Walker* court observed that permitting dependants of nonseaman to recover damages that the beneficiaries of seaman (i.e. wards of admiralty) cannot would thwart the goals of uniformity and provoke an anomalous result--" 'those who are entitled the greatest degree of protection under maritime law--would be afforded a lessor degree of protection than non-seaman." ' Id. at 536 n. 12.

In *Galveston County Navigation Dist. No. 1 v. Hopson Towing Co.*, 92 F.3d 353, 358 (5th Cir.1996), the Fifth Circuit noted that there is arguably a question of whether there is some class of willful and wanton conduct for which punitive damages are available under the general maritime law. The lengthy discourse which presaged that note, however, would dictate a negative answer. The *Galveston County* court observed that the Supreme Court has never affirmed an award of punitive damages in an admiralty case. Id. at 359 n. 11. The court also noted

that there was only one reported admiralty case, prior to *Vaughan*,[5] which actually awarded punitive damages.[6] Also, as noted below, in the Fifth Circuit's opinion, the award in *Vaughan* was for attorney's fees (pecuniary in nature), and not punitive in the tort sense.

[5] The Fifth Circuit reiterated its observations in *Guevara* that some courts have misread *Vaughan* as authorizing punitive damages in admiralty. In its view, the *Vaughan* award was not punitive in the tort sense, but rather, bad-faith fee shifting which punishes abuses of the litigation process. 92 F.3d at 359 nn. 11 and 13.

[6] See, *Gallagher v. The Yankee*, 9 Fd.Cas. 1091 (N.D.Cal. 1859), aff'd, 30 Fd.Cas. 781 (Cir.Ct.N.D.Cal. 1859) (involving the conduct of a master in executing the sentence of some California vigilantes, who seized a person on land, sentenced him to exile, and handed him over to the defendant ship's master to transport him to the Sandwich Islands and leave him there). *Galveston County*, 92 F.3d at 359 n. 11. The conduct at issue is The Yankee involved "a marine tort of the most flagrant character" (i.e., the unlawful deportation of an American citizen pursuant to a sentence issued by an illegal and self-constituted body of men). 9 Fd.Cas. at 1091. By today's standards the conduct of the master at issue in The Yankee closely parallels conspiracy kidnaping-- prosecutable as a federal felony offense.

As previously noted, the *Guevara* court observed that after *Miles*, it is clear that *Dyer v. Merry Shipping Co.*, 650 F.2d 622 (5th Cir.1981) has been effectively overruled. The precise holding of *Merry Shipping* was that "in this [the Fifth] Circuit punitive damages may be recovered under the general maritime law upon a showing of willful and wanton misconduct by a shipowner." 650 F.2d at 626.

As one district court judge has noted. "[w]ith the death of *Merry Shipping* ... [p]unitive damages claims under the general maritime law are no longer supported by the law of this circuit." *Bardwell v. George G. Sharp, Inc.*, 1995 WL 517120 (E.D.La. August 30, 1995); see also, *Hayden v. Acadian Pipeline System*, 1997 WL 382059 (E.D.La. July 9, 1997). Moreover, and as previously noted by the Fifth Circuit in *Galveston County*, supra, there is no Supreme Court authority for an award for punitive damages under the general maritime law. 92 F.3d at 359 n. 11.

An additional consideration alluded to previously which counsels in favor of adherence to the Miles' refrain (i.e., uniformity of admiralty law), is that the circumstances of this particular case could not be

more closely related to activity traditionally subject to admiralty law.[7] Notwithstanding the fact that the claimants were nonseaman passengers of the crewboat MISS BERNICE, this is a vessel collision case involving alleged personal injury which bears a substantial connection to traditional maritime activity. This is not the "on the fringes" type of admiralty case involving jet skis or pleasure craft or an aircraft which happens to fall into navigable water. It is your typical admiralty case which involves a collision of commercial vessels in the ordinary course of maritime business, on a navigable waterway, which is subject to heavy commercial traffic.

> [7] As previously mentioned, the captioned consolidated proceedings arise out of the March 25, 1999 head-on collision between the OSV CANE RIVER and the CB MISS BERNICE in the fog on the Mississippi River near the Lower Jump Shoal Buoy, below Venice, Louisiana. On March 25, 1999, Trico Marine, owner/operator of the OSV CANE RIVER filed suit against Diamond B, owner/operator of the CB MISS BERNICE. Thereafter, on March 29, 1999 and April 30, 1999, respectively, Trico Marine and Diamond B filed complaints for exoneration from or limitation of liability. The Clerk of Court made a entry of default in the consolidated limitation proceedings on June 10, 1999 pursuant to petitioners' motion. The matter is presently set for trial in two months, on May 1, 2000.

In conclusion, the Court notes that other circuits, in addition to the Fifth, have concluded that the *Miles* rationale operates to preclude claimants other than seaman from recovering nonpecuniary damages under

the general maritime law, including punitive damages.[8]

[8] See e.g., *In re Amtrak "Sunset Ltd." Train Crash*, 121 F.3d 1421 (11th Cir. 1997), cert. denied sub nom, *Altosino v. Warrior & Gulf Navigation Co.*, 118 S.Ct. 1041 (1998) (distinguishing *Yamaha Motor Corp. v. Calhoun*, 116 S.Ct. 619 (1996) and refusing to extend state law remedies to personal injury claimants (nonseamen) seeking non-pecuniary damages/punitive damages resulting from allision of a commercial tug and tow with a railroad bridge occurring in state territorial waters and holding that pure, unadulterated federal maritime law applied-- that is, "a body of laws ... that have been fitted over the years for just these type of situations.");

Glynn v. Roy Al Boat Management Corp., 57 F.3d 1495 (9th Cir.1995); *Horsley v. Mobil Oil Corp.*, 15 F.3d 200, 203 (1st Cir.1994) (no right to recover loss of consortium or punitive damages in unseaworthiness action involving nonfatal injury); *Smith v. Trinidad Corp.*, 992 F.2d 996 (9th Cir. 1993) (per curiam) (same); *Murray v. Anthony J. Bertucci Constr. Co.*, 958 F.2d 127, 132 (5th Cir.) (same), cert. denied, 113 S.Ct. 190 (1992); and *Miller v. American President Lines, Ltd.*, 989 F.2d 1450, 1459 (9th Cir.1993) (no punitive damages in wrongful death action alleging unseaworthiness).

Also, the Fifth Circuit, in *Galveston County* which is discussed above, is not the only circuit which has noted the utter absence of Supreme Court authority for the recovery punitive damages under the general maritime law.[9]

[9] The Eleventh Circuit in *In re Amtrak "Sunset Ltd." Train Crash* observed:

> Unless and until the United States Supreme Court should decide to add state remedies for personal injury, personal injury claimants have no claim for nonpecuniary damages such as loss of society, loss of consortium or punitive damages .... We are aware of no decision of the Supreme Court ... which has authorized punitive damages in a personal injury case. 121 F.3d at 1429.

Also, the Ninth Circuit's decision *Glynn v. Roy Al Boat*, 57 F.3d 1495 (9th Cir.1995) (holding punitive damages not available) fixated on the absence of Supreme Court authority for an award of punitive damages. Because *Miles* did not consider the availability of punitive damages, the *Glynn* court turned first to *Vaughan v. Atkinson*-- wherein "the [Supreme] Court for the first time allowed recovery beyond the expenses required for maintenance and cure." 57 F.3d at 1503. The *Glynn* court discern "no support for punitive damages in addition to attorney's fees in Vaughan

> its" as did the Fifth Circuit. According to the Ninth Circuit, "*Vaughan* provides seaman with an appropriate remedy for the 'necessary expenses' and damages caused by the willful and persistent failure to pay what is due: hiring a lawyer, filing suit, and incurring legal expenses on top of expenses for their own maintenance and cure. 57 F.3d at 1503-1505. In other words, the award in *Vaughan* appears to be pecuniary in nature.
>
> In the absence of any Fifth Circuit or Supreme Court authority for an award of punitive damages under the general maritime law, the Court is of the opinion that the personal injury claimants' motion to amend their claims in these consolidated limitation proceedings is futile. (emphasis supplied.)

Id at 1-3.

As the Eleventh Circuit Court of Appeals stated in *In re Amtrak, Ltd.*, supra:

> Twenty-six years later, the Supreme Court in *Yamaha* interpreted *Moragne* as adding remedies and not deleting any remedies which existed prior to *Moragne*. Admiralty remedies for personal injury existed prior to *The Harrisburg*, 119 U.S. 199, 7 S.Ct. 140, 30 L.Ed. 358 (1886). See *Leathers v. Blessing* 105 U.S. 626, 15 Otto 626, 26 L.Ed. 1192 (1881). Therefore, there was no need to look to state law for remedies in the case of non-seamen injured in state territorial waters and no need for a *Moragne* decision or a *Yamaha* decision. Unless or until the United States Supreme Court should decide to add state

> remedies to the admiralty remedies for personal injury, personal injury claimants have no claim for nonpecuniary damages such as loss of society, loss of consortium or punitive damages, except in exceptional circumstances such as willful failure to furnish maintenance and cure to a seaman, intentional denial of a vessel owner to furnish a seaworthy vessel to a seaman and in those very rare situations of intentional wrongdoing. We are aware of no decision in the Supreme Court or in any of the circuit courts which has authorized punitive damages in a personal injury case.
>
> In *Lollie v. Brown Marine Serv., Inc.*, 995 F.2d 1565, 1565 (11th Cir. 1993), we looked disfavorably on the availability of nonpecuniary damages under the general maritime law. Specifically, we held that "neither the Jones Act nor general maritime law authorizes recovery for loss of society or consortium in personal injury cases." Id.
>
> Today, we expressly extend our holdings in *Lollie* to preclude the availability of punitive damages in personal injury actions brought under the general maritime law. Accordingly, we vacate the district court's ruling that the personal injury plaintiffs in this action are entitled to pursue such non pecuniary damages.

In re Amtrack, 121 F.3d at 1428-1429. (Emphasis Supplied)

This decision, i.e., *In Re Amtrack,* has been described as "the most definitive and authoritative post-*Miles* statement by any court regarding nonpecuniary personal injury damages for non-seafarers." Nash Bilisoly, THE RELATIONSHIP OF STATUS AND DAMAGES IN MARITIME PERSONAL INJURY, 72 Tul.L.Rev. 493, 536 (1997). With the United States Supreme Court

denying certiorari in *In Re Amtrack*, one must presume it accurately expresses the law of the land. Although some earlier decisions may have stated punitive damages were available in some circumstances where a party unreasonably refused to pay maintenance and cure, no case other than *CEH, Inc. v. F/V Seafarer*, 70 F.3d 694 (1st Cir. 1995) has authorized the punitive damages in a case similar to Doxey's claim. *In Re Amtrack*, clearly suggests that the rationale of *CEH, Inc.*, was not favorably viewed by this Court.

The Louisiana Fourth Circuit rejected *CEH, Inc. v. F/V Seafarer*, 70 F.3d 694 (1st Cir. 1995) as authority for punitive damages in *Brodtmann v. Duke*, 96-0257 (La.App. 4 Cir. 2/11/98); 708 So.2d 447[2], denying punitive damages,. Now that the Third Circuit has adopted *CEH, Inc. v. F/V Seafarer*, supra, as authority, the split in the Louisiana Courts of Appeal circuits is even more pronounced and, now the underlying basis is clearly at issue. With state and federal courts rendering conflicting decisions, it is appropriate that this Court clarify the law in question and give clear guidance to courts who clearly need guidance.

II. FEDERAL MARITIME LAW GOVERNS REMEDIES IN STATE COURTS ON ADMIRALTY CAUSES OF ACTION

The Louisiana Supreme Court granted certiorari in *Lejano v. K.S. Bandok*, 97-0388 (La. 12/12/97), 705 So.2d 158, 1998 A.M.C. 692 (La. Dec. 12, 1997), rehearing denied (Mar. 27, 1998), certiorari denied 525 U.S. 815, 119 S.Ct. 52, 142 L.Ed.2d 40, 66 USLW 3774, 67 USLW 3012, 67 USLW 3219, 67 USLW 3229 (U.S. La. Oct. 5, 1998) No. 97-1882 to review the enforceability and validity of a forum selection clause.

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[2]*Brodtman v. Duke*, 98-0645 (La. 4/24/98); 717 So.2d 1177 and *writ denied* by *Brodtman v. Duke*, 98-0658 (La. 4/24/98); 717 So.2d 1178 and *certiorari denied* by *Brodtman v. Duke*, 525 U.S. 1017, 119 S.Ct. 541, 142 L.Ed.2d 450 (1998)

After a thorough review of maritime jurisdiction, the Louisiana Supreme Court stated:

> [1][2] 28 U.S.C. § 133 has been interpreted as making federal court admiralty jurisdiction exclusive as to actions in rem [FN5] against vessels or against other maritime property. ROBERTSON, *supra* note 81, at 698.[3] Most admiralty cases, however, are case of concurrent jurisdiction rather than exclusive jurisdiction. ROBERTSON, *supra* at 699. The plaintiff may bring the case in federal court on the basis of admiralty jurisdiction, or the plaintiff may take advantage of the "saving to suitors" clause, which has been interpreted as giving the plaintiff in most types of admiralty or maritime cases the option of bringing the suit in state court. ROBERTSON, *supra* note 86, at 699. The "saving to suitors" clause allows state courts to entertain in personam maritime causes of action, but in such cases the extent to which state law may be used to remedy maritime injuries is constrained by as so-called "reverse-Erie" doctrine, which requires that the substantive remedies afforded by the states conform to governing federal maritime standards. *Offshore Logistics, Inc., et al v. Tallentire*, 477 U.S. 207, 106 S.Ct. 2485, 91 L.Ed.2d 174 (1986); ROBERTSON, *supra* note 91, at 700. When a maritime plaintiff takes advantage of the "saving to suitors" clause to bring his case in state court, as a matter of general principle the state court is obligated by the Constitution's Supremacy Clause to follow the applicable substantive federal maritime law. ROBERTSON, *supra* note 87, at 699. On matters of

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[3] DAVID W. ROBERTSON, ADMIRALTY AND MARITIME LITIGATION IN STATE COURT, 55 LA. LAW REVIEW 85 (1995)

> procedure, however, the state court is generally free to follow the state's own rules. ROBERTSON, *supra* note 88, at 699. The Supremacy Clause restraint on the state courts is often called the "reverse-Erie" doctrine. Supra. During the past several years, the number of admiralty or maritime cases brought in state courts has increased. ROBERTSON, *supra* note 1, at 686.

Id. at 162-163.

In accord with this principle see also *Milstead v. Diamond M. Offshore, Inc.*, 95-2446 (La. 7/2/96) 676 So.2d 89, 94, 1996 A.M.C. 2431; *Southern Pacific Company v. Jensen*, 244 U.S. 205, 37 S.Ct. 524, 61 L.Ed. 1086 (1917); *Green v. Industrial Helicopters, Inc.*, 593 So.2d 634 (La. 1992), citing *Powell v. Offshore Navigation, Inc.* 644 F.2d 1063, 1065 n. 5 (5th Cir. 1981); *Perry v. Allied Offshore Marine Corp.*, 618 So.2d 1033 (La. App. 1 Cir., 1993); *Miller v. American Dredging Co.*, 595 So.2d 615 (La. 1992); and T. Schoenbaum, *Admiralty and Maritime Law* § 4-1 at 123 (1987).

In *Edmonds v. Boh Bros. Construction Co.*, 522 So.2d 1166 (La. App. 4 Cir., 1988) the Court stated federal substantive law must be applied in a claim for punitive damages, citing *Gaspard v. Transworld Drilling Company*, 468 So.2d 692 (La. App. 3 Cir. 1985); writ denied, 474 So.2d 1304 (La.) cert. denied, 475 U.S. 1067, 106 S.Ct. 1382, 89 L.Ed.2d 607 (1985).

The application of *Guevara*, supra., would mandate a reversal of the Louisiana Third Circuit's and Louisiana Supreme Court's allowance of a claim for punitive damages in this matter.

III. THE FIRST FEDERAL CIRCUIT IS IN CONFLICT WITH THE FIFTH, NINTH AND ELEVENTH CIRCUITS

The *CEH, Inc.*, supra, the First Federal Circuit affirmed the availability of punitive damages by analyzing this Court's decision in *Miles*, supra.:

> The Court's decision to "restore a uniform rule applicable to all actions for the wrongful death of a seaman," *id* logically followed the principle espoused in *Moragne*, 398 U.S. at 401-02, 90 S.Ct. at 1788 (quoting *The Lottawann*, 88 U.S. (21 Wall.) 558, 575, 22 L.Ed. 654 (1875), to promote "uniformity [that] not only will further the concerns of both of the 1920 Acts but also will give effect to the constitutionally based principle that federal admiralty law should be a system of law coextensive with, and operating uniformity in, the whole country,' " Though these principles of uniformity defy precise limits, we think it clear that the Supreme Court had in mind the need to defer to statutory enactments addressing like issues. As the Court reasoned: "In this era, an admiralty court should look primarily to these legislative enactments for policy guidance. . . . [and] must be vigilant not to overstep the well-considered boundaries imposed by federal legislation. *Miles* 498 U.S. at 27, 111 S.Ct. at 32 *Miles* therefore, does not, as defendants contend, signify a call for universal uniformity of maritime tort remedy, but rather emphasizes the importance of uniformity in the face of applicable legislation.
>
> The cases post-*Miles* reflect this focus on relevant legislation. If the factual situation could support an action under either DOHSA or the Jones Act, then nonpecuniary relief is unavailable. *See, e.g., Horsley*

v. Mobil Oil Corp. 15 F.3d 200, 203 (1st Cir. 1994) (punitive damages not recoverable in unseaworthiness action for injured seaman) *Miller v. American President Lines, Ltd.* 989 F.2d 1450, 1459 (6th Cir. 1993) (punitive damages not available in unseaworthiness action for the wrongful death of a seaman); *Rollins v. Peterson Builders, Inc.*, 761 F.Supp. 943, 950 (D.R.I. 1991) (same).

The import of this legislation in the context of personal injury has led some courts to bar nonpecuniary relief in circumstances addressed by the Jones Act, but involved non-Jones Act plaintiffs and defendants. *See, e.g., Wahlstrom v. Kawasaki Heavy Industries, Ltd.* 4 F.3d 1084, 1094 (2d Cir. 1993) (concluding, based in large part on post-*Miles* authority, that representatives of a deceased *nonseaman* could not recover punitive damages under the general maritime law); *Trahan v. Texaco, Inc.*, 625 So.2d 295, 297 (La.App. 4th Cir. 1993) (dismissing a general maritime claim for loss of consortium brought by a seaman's spouse against *nonemployer* third-party defendants); *but see, e.g. Emery v. Rock Island Boatworks* 847 F.Supp. 114, 117-18 (C.D. Ill. 1994) (injured passenger's husband could recover nonpecuniary damages because his claim not cognizable under the Jones Act or DOHSA and, therefore, concerns for uniformity do not exist); *Sugden v. Puget Sound Tug & Barge Co.*, 796 F.Supp. 455, 457 (W.D.Wash. 1992) (wife of deceased seaman could recover nonpecuniary damages from non-employer because husband was not a Jones Act seaman for purposes of the suit).

Recently, the Fifth Circuit held that cure and maintenance claims, often considered to lack a

> statutory counter, *see Anderson v. Texaco, Inc.*, 797 F.Supp. 531, 536 (E.D.La. 1992), were, in fact, governed by *Miles, Guevara v. Maritime Overseas Corp.*, 59 F.3d 1496, 1512 (5th Cir. 1995) (en banc); *see also Glynn v. Roy Al Boat Management Corp.*, 57 F.3d 1495 (9th Cir. 1995).[7]
>
> [7] *Glynn* and *Guevara* reached identical results through different means. Though concluding that limiting recovery in cure and maintenance claims was consistent with *Miles*, the Ninth Circuit relied primarily on its conclusion that there was no legal support for punitive damages in such cases. 57 F.3d at 1504-05.

Id. at 700-701.

The First Circuit clearly points out the conflict among the circuits over the breadth of *Miles*.

CONCLUSION

This case presents to this Court the opportunity to resolve an issue which is in conflict in may state and federal courts in a proceeding with simple facts. While the principles of uniformity espoused in *Miles* are clear to the courts in Jones Act and DOSHA claims, the same courts differ on the availability of non-pecuniary and specifically, punitive damages, to non-seamen under the General Maritime Law. This conflict among the courts does to appear to be generating its own solution by reaching a uniform result. By allowing the non-seaman to recover punitive damages, it creates a situation where that non-seaman has rights which are greater (at least potentially) than the seaman who has been traditionally been a ward of the courts. A clarification is necessary to promote uniformity and to prevent situations where, such as is claimed by Hubern Doxey, a property damage claim is susceptible to a greater damage recovery than an injured seaman. Any system which values property more than human life certainly warrants a review. Under the jurisprudence and rational thought analysis, this Court should resolve this conflict by clearly holding that non-pecuniary and punitive damages are not available to non-seaman under the General Maritime Law.

Respectfully submitted,

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APPENDIX

APPENDIX A

The Supreme Court of the State of Louisiana

NO. 2001-CC-0614

HUBERN DOXEY

VS.

LAKE CHARLES PILOTS, INC.

IN RE: Lake Charles Pilots, Inc. ; – Defendant; Applying for Writ of Certiorari and/or Review, Parish of Cameron, 38th Judicial District Court Div. O, Nos. 10-15398; to the Court of Appeal, Third Circuit, No. 00 0530

May 4, 2001

Denied.

CDK
PFC
BJJ
JPV
JTK

TRAYLOR, J., would grant the writ.
CIACCIO, J., would grant the writ.

Supreme Court of Louisiana
May 4, 2001

/s/ Rai L. Daigli
Deputy
Clerk of Court
For the Court

APPENDIX B

STATE OF LOUISIANA
COURT OF APPEAL, THIRD CIRCUIT

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00 0530

HUBERN DOXEY

VERSUS

LAKE CHARLES PILOTS, INC.

Judgment rendered January 31, 2001
Applications for rehearing may be filed
within the delays allowed by La.Code Civ.P.
art. 2166 or La.Code Crim.P. art. 922.

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APPEAL FROM THE
THIRTY-EIGHTH JUDICIAL DISTRICT
PARISH OF CAMERON, NO. 10-15398
HON. H. WARD FONTENOT

****

GLENN B. GREMILLION
JUDGE

****

(Court composed of Chief Judge Ned E. Doucet Jr., Judge Michael G. Sullivan, and Judge Glenn B. Gremillion.)

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WRIT GRANTED.

GREMILLION, Judge.

This matter is on remand from the Louisiana Supreme Court for briefing, argument, and opinion. We originally granted writs in favor of the plaintiff, Hubern Doxey, finding that the trial court erred in ruling that he could not meet the jurisdictional limits for a jury trial based on a finding that punitive damages were not available under general maritime law. *See* an unpublished writ 00-0530 (La.App. 3 Cir.5/17/00). Thereafter, the defendant, Lake Charles Pilots, Inc., sought supervisory writs from the supreme court, which granted the writ and remanded the matter to us. For the following reasons, we affirm our granting of Doxey's writ because we find that punitive damages are available under general maritime law under the facts at issue.

FACTS

On February 26, 1999, Doxey was attempting to launch his sixteen-foot boat into the Calcasieu Ship Channel from a boat launch located at the jetties in Cameron, Cameron Parish, Louisiana. After he had backed his boat trailer down the launch, but before he could release the boat from the trailer, the wake from a passing vessel lifted the truck and trailer up and then pulled them down into the channel as the water was sucked out from underneath them. The damage from the salt water caused Doxey's insurance company to total the truck. The name of the vessel which allegedly caused this damage was the M/V OLYMPIC FLAIR.

Doxey filed suit against Lake Charles Pilots alleging that the pilot in control of the M/V OLYMPIC FLAIR at the time of the incident acted in a wanton and reckless manner, which amounted to a conscious disregard of his rights. Since his damages were caused by a vessel on navigable water, Doxey further alleged that admiralty jurisdiction existed under the Admiralty Extension Act, 46 U.S.C. 740. The damages sought by him were comprised of the value of his truck, economic loss from being unable to work as a commercial fisherman, mental anguish, punitive damages under general maritime law, and any other damages proved at trial. Doxey further prayed for a trial by jury.

Lake Charles Pilots answered denying liability. It further argued that Doxey was not entitled to a jury trial pursuant to La.Code Civ.P. art. 1732(6) since he alleged a claim under admiralty law. Thereafter, Doxey filed a Motion for an Order of Jury Trial, alleging that it was solely his choice to decide whether his claim was heard by a jury. Prior to the hearing on the motion, Doxey's deposition was taken at the insistence of Lake Charles Pilots. During his testimony, he admitted that his pecuniary damages resulting from this incident probably totaled

less than $25,000. On February 14, 2000, the trial court denied Doxey's motion and ruled that he was not entitled to a jury trial. A judgment denying the motion was signed on March 15, 2000.

On an application for supervisory writs, we granted the writ finding that the trial court erred in ruling that Doxey could not meet the $50,000 jurisdictional limit for a jury trial on the grounds that punitive damages were unavailable under general maritime law. The trial court's ruling was reversed and the matter was remanded for further proceedings. Thereafter, Lake Charles Pilots applied for writ of certiorari and/or supervisory writs from the Louisiana Supreme Court. That court granted the writ and remanded the matter to this court for briefing, argument, and opinion. Following the remand, an order was granted by this court staying all proceedings in the trial court pending this appeal.

ISSUE

The issue before this court is whether punitive damages are available under general maritime law.

DISCUSSION

Pursuant to the Admiralty Extension Act, admiralty jurisdiction extends to this matter since the damage was caused by a vessel on navigable waters. 46 U.S.C.A. App. § 740 (1994); *In re Amtrack "Sunset Limited" Train Crash,* 121 F.3d 1421 (11th Cir. 1997), *cert. denied sub nom, Altosino v. Warrior & Gulf Navigation Co.,* 522 U.S. 1110, 118 S.Ct. 1041 (1998). Accordingly, substantive admiralty law applies. *Yamaha Motor Corp., U.S.A. v. Calhoun,* 516 U.S. 199, 116 S.Ct. 619 (1996).

We will first review the federal cases dealing with the availability of punitive damages under general maritime law. In *Miles v. Apex Marine Corp.,* 498 U.S. 19, 111 S.Ct. 317

(1990), the United States Supreme Court clarified that its prior holding in *Moragne v. States Marine Lines, Inc.*, 398 U.S. 375, 90 S.Ct. 1772 (1970), created a general maritime cause of action for the wrongful death of a seaman, even when the death occurred in territorial waters. Prior to reaching a decision, the Court reviewed its decision in *Moragne* thoroughly. The main theme of *Moragne* was the need for uniformity in the exercise of admiralty jurisdiction. It pointed out that the rise of unseaworthiness as a theory of recovery under the Death on the High Seas Act (DOHSA) had resulted in the development of three anomalies in maritime law, upsetting the uniformity previously existing when negligence was the main theory of recovery in maritime wrongful death actions.[1] In order to reestablish that uniformity, the Court overruled *The Harrisburg*, 119 U.S. 199, 7 S.Ct. 140 (1886), which held that there was no cause of action for wrongful death under general maritime law. The Court in *Miles*, stated:

> The result was not only consistent with the general policy of both 1920 Acts [the Jones Act and DOHSA] favoring wrongful death recovery, but also effectuated "the constitutionally based principal that federal admiralty law should be 'a system of law coextensive with, and operating uniformly in, the whole country.'"

---

[1] In the first anomaly, general maritime law allowed a cause of action in territorial waters for unseaworthiness resulting in injury, but not death. In the second, DOHSA allowed a cause of action for death resulting from unseaworthiness on the high seas, but there was no corresponding section under general maritime law in territorial waters. In the final anomaly, in those states allowing a cause of action for wrongful death due to unseaworthiness, recovery could be had for the death of a longshoreman, but not a seaman, since the Jones Act pre-empted state law as it applied to seamen and only allowed recovery for death resulting from negligence.

Miles, 498 U.S. at 27, 111 S.Ct. at 322-23, quoting *Moragne*, 398 U.S. at 402, 90 S.Ct. 1788, quoting *The Lottawanna*, 21 Wall. 558, 575 (1875).

In confirming that *Moragne* created a general maritime wrongful death action, *Miles* applied the same reasoning used by that court to reach its decision. It stated:

> We have described *Moragne* at length because it exemplifies the fundamental principles that guide our decision in this case. We no longer live in an era when seamen and their loved ones must look primarily to the courts as a source of substantive legal protection from injury and death; Congress and the States have legislated extensively in these areas. In this era, an admiralty court should look primarily to these legislative enactments for policy guidance. We may supplement these statutory remedies where doing so would achieve the uniform vindication of such policies consistent with our constitutional mandate, but we must also keep strictly within the limits imposed by Congress. Congress retains superior authority in these matters, and an admiralty court must be vigilant not to overstep the well-considered boundaries imposed by federal legislation. These statutes both direct and delimit our actions.

Miles, 498 U.S. at 27, 111 S.Ct. at 323.

In addressing the issue of whether damages for loss of society could be recovered in a general maritime wrongful death action, the Court once again strove for a decision which would be harmonious with federal admiralty law. In following the same analytical framework previously discussed, it reviewed legislative pronouncements in this area. DOHSA limited the damages recoverable in a wrongful death action to pecuniary damages. The Jones Act, through incorporation of

the recovery provisions of the Federal Employers' Liability Act (FELA), also limited the damages recoverable under a wrongful death provision to pecuniary damages. Because the Jones Act wrongful death action was based on negligence, and not the strict liability theory of unseaworthiness as DOHSA, the Court stated:

> It would be inconsistent with our place in the constitutional scheme were we to sanction more expansive remedies in a judicially created cause of action in which liability is without fault than Congress has allowed in cases of death resulting from negligence. We must conclude that there is no recovery for loss of society in a general maritime action for the wrongful death of a Jones Act seaman.
>
> . . . Today we restore a uniform rule applicable to all actions for the wrongful death of a seaman, whether under DOHSA, the Jones Act, or general maritime law.

Id. at 32-33, 326.

The Court used a similar reasoning to find that a general maritime survival action does not include recovery for a decedent's lost future income.

In *Guevara v. Maritime Overseas Corp.*, 59 F.3d 1496, 1506-07 (5th Cir. 1995), *cert. denied*, 516 U.S. 1046, 116 S.Ct. 706 (1996) (footnotes omitted), the Fifth Circuit, sitting en banc, applied the *Miles'* uniformity principles to find that punitive damages were no longer available for the willful nonpayment of maintenance and cure under general maritime law:

> The analytical framework of *Miles* governs our approach to deciding damages issues in general maritime actions. In order to decide whether (and

how) *Miles* applies to a case, a court must first evaluate the factual setting of the case and determine what statutory remedial measures, if any, apply in that context. If the situation is covered by a statute like the Jones Act or DOHSA, and the statute informs and limits the available damages, the statute directs and delimits the recovery available under the general maritime law as well. The general maritime law will not expand the available damages when Congress has spoken to the relief it deems appropriate or inappropriate. *See Anderson v. Texaco, Inc.*, 797 F.Supp. 531, 536 (E.D.La.1992).

. . . .

Taking the analysis one step further, it should be clear that actions under the general maritime law for personal injury are also subject to the *Miles* uniformity principle, as non-fatal actions for personal injury to a seaman are covered by statute--i.e., the Jones Act. Thus, many courts have extended *Miles*' logic to prohibit the recovery of certain damages in personal injury factual settings that are covered by statute, even when these personal injury claims are brought under the general maritime law.

In light of *Miles*, the *Guevara* court held that the holding in *Dyer v. Merry Shipping Co.*, 650 F.2d 622 (5th Cir. 1981), that punitive damages were available in wrongful death cases brought under the unseaworthiness doctrine of general maritime law, was effectively overruled. Under the factual scenario in *Dyer*, had it been decided post-*Miles*, the Jones Act would have limited the type of remedies available.

The *Guevara* court recognized two types of maintenance and cure actions: a tort-like action which involves personal injury and a contract-like action which involves the loss of

money. Because the tort-like maintenance and cure action requires that the seaman suffer a personal injury, the court found that it overlapped with the personal injury coverage of the Jones Act. Thus, the court held that *Miles'* damages uniformity principle applied to limit the damages available. It also found several reasons for denying punitive damages pursuant to the contract-like maintenance and cure action: (1) It would be peculiar to award punitive damages to a seaman suffering a monetary loss, yet not award them to a seaman suffering from personal injury; (2) The development of federal admiralty law should harmonize with Congressional pronouncements in related legislative schemes; (3) The need for uniformity within the federal admiralty law; and (4) Breach of contract cases do not allow punitive damages.

In *CEH, Inc. v. F/V Seafarer,* 70 F.3d 694 (1st Cir. 1995), the First Circuit held that punitive damages were available under the general maritime law in a case involving the reckless and willful destruction of property. The court noted that punitive damages had traditionally been recognized in general maritime actions where the defendant's "intentional or wanton and reckless conduct amounted to a conscious disregard of the rights of others." *Id.* at 699 (citations omitted). In refusing to extend *Miles* so as to bar recovery for punitive damages in all general maritime cases, the court stated:

> The Court's decision to "restore a uniform rule applicable to all actions for the wrongful death of a seaman," *id.*, logically followed the principle espoused in *Moragne,* 398 U.S. at 401-02, 90 S.Ct. at 1788 (quoting *The Lottawanna, 88 U.S.* (21 Wall.) 558, 575, 22 L.Ed. 654 (1875)). to promote "uniformity [that] not only will further the concerns of both 1920 Acts but also will give effect to the constitutionally based principle that federal admiralty law should be 'a system of law coextensive with, and

operating uniformly in, the whole country.'" Though these principles of uniformity defy precise limits, we think it clear that the Supreme Court had in mind the need to defer to statutory enactments addressing like issues. As the Court reasoned: "In this era, an admiralty court should look primarily to these legislative enactments for policy guidance....[and] must be vigilant not to overstep the well-considered boundaries imposed by federal legislation." *Miles,* 498 U.S. at 27, 111 S.Ct. at 322. *Miles,* therefore, does not, as defendants contend, signify a call for universal uniformity of maritime tort remedy, but rather emphasizes the importance of uniformity in the face of applicable legislation.

The cases post-*Miles* reflect this focus on relevant legislation. If the factual situation could support an action under either DOHSA or the Jones Act, then nonpecuniary relief is unavailable....

The import of this legislation in the context of personal injury has led some courts to bar nonpecuniary relief in circumstances addressed by the Jones Act, but involving non-Jones Act plaintiffs and defendants. *See, e.g., Wahlstrom v. Kawasaki Heavy Industries, Ltd.,* 4 F.3d 1084, 1094 (2d Cir.1993) (concluding, based in large part on post-*Miles* authority, that representatives of a deceased nonseaman could not recover punitive damages under the general maritime law); *Trahan v. Texaco, Inc.,* 625 So.2d 295, 297 (La.App. 4th Cir.1993) (dismissing a general maritime claim for loss of consortium brought by a seaman's spouse against nonemployer third-party defendants); *but see, e.g., Emery v. Rock Island Boatworks,* 847 F.Supp. 114, 117-18 (C.D.Ill.1994) (injured passenger's husband

could recover nonpecuniary damages because his claim not cognizable under the Jones Act for DOHSA and, therefore, concerns for uniformity do not exist); *Sugden v. Puget Sound Tug & Barge Co.*, 796 F.Supp. 455, 457 (W.D.Wash.1992) (wife of deceased seaman could recover nonpecuniary damages from nonemployer because husband was not a Jones Act seaman for purposes of the suit).

Recently, the Fifth Circuit held that cure and maintenance claims, often considered to lack a statutory counterpart, *see Anderson v. Texaco, Inc.*, 797 F.Supp. 531, 536 (E.D.La.1992), were, in fact, governed by *Miles*. *Guevara v. Maritime Overseas Corp.*, 59 F.3d 1496, 1512 (5th Cir.1995) (en banc); *see also Glynn v. Roy Al Boat Management Corp.*, 57 F.3d 1495 (9th Cir.1995). While at first glance, *Guevara* may seem to provide comfort to defendants, a closer reading supports our belief that *Miles* simply is irrelevant here.

Guevara followed the approach set forth in *Miles*. First, the court determined whether the factual setting of the case was covered by a statute like the Jones Act or DOHSA. 59 F.3d at 1506. Then, upon finding a statutory/general maritime law overlap, the court invoked the "*Miles* damages uniformity principle" and excluded punitive damages. *Id.* at 1512-13. As the court reasoned, "[i]t makes little sense to create a fragmentation of admiralty law by allowing punitive damages in one class of maintenance and cure cases" while disallowing them in another. *Id.* at 1513.

Guevara does not assist defendants in any way. Rather, it merely illustrates, as do the other post-*Miles* cases cited above, that *Miles* may be applicable in

those areas of maritime law where, at the very least, there is an overlap between statutory and decisional law. In the instant case, however, there is no legislation whatever that touches upon circumstances involving the reckless or willful destruction of property. Quite simply, Congress has not spoken, and we consequently see no basis under *Miles* for barring nonpecuniary relief here.

Defendant's contention that it would be peculiar to provide plaintiffs greater relief for property damage than for personal injury has some force. The concern expressed in *Miles,* however, was not with respect to an award of nonpecuniary damages in maritime cases in general, but with inconsistency with Congressional pronouncement. *Miles* does not mandate a uniform result for every maritime action and we are hesitant to ascribe to the Court a holding that goes will beyond any issue discussed there. *See United States v. London,* 66 F.3d 1227, 1241 (1st Cir.1995).

In sum, in the absence of any relevant legislation, we think that the uniformity principle enunciated in *Miles* is inapplicable. Therefore, plaintiffs are entitled to forms of relief traditionally available under the general maritime law, including punitive damages. Accordingly, we affirm the district court's determination that punitive damages are recoverable under plaintiff's general maritime claim.

Id. at 700-02 (citations omitted) (footnotes omitted).

In 1996, the United States Supreme Court decided *Yamaha,* 516 U.S. 199, 116 S.Ct. 619, in which it held that the general maritime wrongful death action recognized by *Moragne* did not supplant the state law remedies available to the parents of a twelve-year-old girl killed while riding a jet ski in

territorial waters off the coast of Puerto Rico. Since the decedent was a nonseafarer and Congress had not prescribed the remedies available to such claimants in territorial waters, the Court held that the remedies available under the applicable state laws were not displaced by the general maritime wrongful death action recognized by *Moragne*. In reaching this decision, the Court stated:

> When Congress has prescribed a comprehensive tort recovery regime to be uniformly applied, there is, we have generally recognized, no cause for enlargement of the damages statutorily provided. *See Miles,* 498 U.S., at 30-36, 111 S.Ct., at 324-328 (Jones Act, rather than general maritime law, determines damages recoverable in action for wrongful death of seamen); *Offshore Logistics Inc. v. Tallentire,* 477 U.S. 207, 232, 106 S.Ct. 2485, 2499, 91 L.Ed.2d 174 (1986) (DOHSA, which limits damages to pecuniary losses, may not be supplemented by nonpecuniary damages under a state wrongful-death statute); *Mobil Oil Corp. v. Higginbotham,* 436 U.S. 618, 624-625, 98 S.Ct. 2010, 2014-2015, 56 L.Ed.2d 581 (1978) (DOHSA precludes damages for loss of society under general maritime law). But Congress has not prescribed remedies for the wrongful deaths of nonseafarers in territorial waters. *See Miles,* 498 U.S., 31, 111 S.Ct., at 325. There is, however, a relevant congressional disposition. Section 7 of DOHSA states: "The provisions of any State statute giving or regulating rights of action or remedies for death shall not be affected by this chapter." 46 U.S.C.App. § 767. This statement, by its terms, simply stops DOHSA from displacing state law in territorial waters. *See Miles,* 498 U.S., at 25, 111 S.Ct., at 321-322; *Tallentire,* 477

> U.S., at 224-225, 106 S.Ct., at 2495-2496; *Moragne*, 398 U.S., at 397-398, 90 S.Ct., at 1785-1786. Taking into account what Congress sought to achieve, we preserve the application of state statutes to deaths within territorial waters.

Id. at 215-16, 628.

In *Galveston County Navigation District No.1 v. Hopson Towing Co., Inc.*, 92 F.3d 353, 358-59 (5th Cir. 1996) (footnotes omitted) (emphasis added), the court stated:

> We held in *Guevara* that, particularly in light of *Miles v. Apex Marine Corp.*, 498 U.S. 19, 111 S.Ct. 317, 112 L.Ed.2d 275 (1990), punitive damages are no longer available in cases of willful nonpayment of maintenance and cure under the general maritime law. *Id.* at 1513. In so holding, we also addressed to some extent the availability of punitive damages in contexts beyond maintenance and cure. For example, we noted that, at least in certain scenarios, punitive damages are not available in a wrongful death action brought by the representative of a seaman under the unseaworthiness doctrine of general maritime law. *Id.* at 1507. We additionally observed that punitive damages are unavailable under the Jones Act. *Id.* at 1506 & n. 7. *Therefore, in light of Guevara, there is arguably some question as to whether or not there remains a class of conduct, alluded to in Morales [v. Garijak, 829 F.2d 1355 (5th Cir. 1987)], for which "punitive damages and attorney's fees"* are available under admiralty law.

In *In re Horizon Cruises Litigation*, 101 F.Supp.2d 204 (S.D.N.Y.2000), passengers on a cruise ship filed personal injury claims against a cruise line after contracting Legionnaires' Disease while sailing on its vessel. Some of the

plaintiffs included a claim for punitive damages in their complaint. In holding that punitive damages were available in these personal injury claims involving non-seamen, the court stated:

> *Miles* and *Yamaha* taken together counsel that where Congress has legislated with respect to a class of maritime cases, relief under state law as well as traditional admiralty remedies may be displayed in the interests of uniformity. However, *Yamaha* makes clear that this uniformity principle does not sweep away the common law unless Congress has spoken. Just as in *Yamaha,* where "Congress has not prescribed remedies for the wrongful deaths of nonseafarers in territorial waters," 516 U.S. at 215, 116 S.Ct. 619, so in this case Congress has passed no law providing for claims by injured passengers or dictating the scope of relief they are entitled to.

Id. at 214.

The court concluded its discussion by stating, "*Yamaha* now makes it clear that principles of uniformity do not reach so broadly." *Id.*

In a recent case, *Liner v. Dravo Basic Materials Co.*, 2000 WL 1693678 (E.D.La.Nov.7,2000), the court denied the defendant's motion for partial summary judgment seeking to strike the plaintiffs' claims for loss of consortium and punitive damages. The non-seamen plaintiffs had suffered injury as the result of the allision of their recreational vessel with an unmarked sunken barge in state territorial waters. Finding that *Yamaha* controlled, the court held that the plaintiffs' claims were governed by general maritime law, but would be supplemented by Louisiana law.

After examining Louisiana law, the court determined that it allowed the plaintiffs a claim for loss of consortium, but did not allow them a claim for punitive damages under the facts stated. However, recognizing that there was a trend in the general maritime law to allow punitive damage in the absence of an overlapping federal statute, the court also denied the motion for partial summary judgment as it pertained to punitive damages.

> In *In re Horizon Cruises Litigation,* 101 F.Supp.2d 204 (S.D.N.Y.2000), plaintiffs brought suit after a defective whirlpool filter caused them to contract Legionnaire's (sic) Disease while aboard the defendant's cruise ship. The Court traced the long history of punitive damages in admiralty law and concluded that the thrust of the *Miles* decision "does not enunciate an absolute bar to recovery of punitive damages in all general maritime cases. Indeed, *Miles* does not signify a case for 'universal uniformity of maritime tort remedy,' but rather 'emphasizes the importance of uniformity in the face of applicable legislation.'" *Id.* at 213 (citations omitted) (emphasis added). Further, the Court found that *Miles* was not concerned with the awarding of nonpecuniary damages, but rather inconsistencies within statutory law. *See id.* Thus, in the interests of uniformity, Congressional legislation may displace both general maritime and State law. *See id.* at 213-14.
>
> In addition, at least three decisions from this district have recognized that maritime plaintiffs who are not covered by a federal statute precluding such damages may have a claim for punitive damages. *See Rutherford v. Mallard Bay Drilling, L.L.C.,* 2000 WL 805230 (E.D. La. June 21, 2000) (holding Longshoreman able to recover nonpecuniary damages

because of continued vitality of *Sea-Land Servs., Inc. v. Gaudet,* 414 U.S. 573, 94 S.Ct. 806 (1974)); *In the Matter of Denet Towing Serv., Inc.,* 1999 WL 329698 (E.D.La.May 21, 1999) (holding no indication in *Miles* of disapproval of long line of cases allowing punitive damages under general maritime law and punitive damages are available under general maritime law where there is no statutory overlap); *Maritrans Operating Partners v. Diana T. M/V,* 1999 WL 144458 (E.D.La. Mar. 15, 1999) (holding punitive damage claim allowed when there is no overlap between general maritime law and a federal statute.).

While the Fifth Circuit in *Guevara v. Maritime Overseas Corp.,* 59 F.3d 1496 (5th Cir.1995) (en banc), *cert. denied,* 516 U.S. 1046, 116 S.Ct. 706 (1996), held punitive damages unavailable in the very limited context of willful nonpayment of maintenance and cure under general maritime law, in *Galveston County Navigation Dist. No. 1 v. Hopson Towing Co., Inc.,* 92 F.3d 353 (5th Cir.1996), the Court noted that "there is arguably some question as to whether or not there remains a class of conduct...for which punitive damages...are available under admiralty law." *Galveston,* 92 F.3d at 359 (citations omitted).

Thus, in the instant case, absent more guidance from above, the [plaintiffs] should have the opportunity to argue their case for punitive damages. The current trend in the case law supports a punitive damages claim under the general maritime law when there is no overlap with federal statutes. Since that is the situation in the current case, summary judgment is

> not warranted to deny the [plaintiffs] the opportunity to present their claim for punitive damages.

Id. at 4-5 (footnote omitted).

DISCUSSION

Applying the analytical principles set out by *Miles* and the succeeding cases, we must "evaluate the factual setting of the case and determine what statutory remedial measures, if any apply in that context." *Guevara,* 59 F.3d at 1506. As in *CEH, Inc.,* 70 F.3d 694, this matter involves the alleged willful or reckless destruction of property. Neither party has pointed to, nor are we aware of, any Congressional pronouncement touching upon this type of claim.

While we recognize the need for uniformity in federal admiralty law, we agree with the court in *CEH, Inc.,* that "*Miles*...does not...signify a call for universal uniformity of maritime tort remedy, but rather emphasizes the importance of uniformity in the face of applicable legislation." *Id.* at 700. Since there are no applicable statutory remedial measures limiting the damages available to Doxey under the factual scenario presented and punitive damages have traditionally been available under general maritime law, we find *Miles'* uniformity principles inapplicable. Accordingly, Doxey should be allowed to include his alleged punitive damages in the amount of damages suffered by him in order to meet the jurisdictional amount required for trial by jury.

We find further support for this position in the case of *Strawder v. Zapata Haynie Corp.,* 94-453 (La.App.3 Cir. 11/2/94); 649 So.2d 554, were we held that punitive damages would lie in a claim brought under general maritime law by the representative of a deceased seaman against a third party tortfeasor. Thus, we find that the trial court erred in denying Doxey's Motion for an Order of Jury Trial by ruling that he

could not meet the jurisdictional limit for a jury trial on the grounds that punitive damages are unavailable under general maritime law. We remand the matter for further proceedings consistent with this opinion.

WRIT GRANTED.

APPENDIX C

COURT OF APPEAL, THIRD CIRCUIT
STATE OF LOUISIANA

NUMBER CW00-530

HUBERN DOXEY

Plaintiff-Applicant

VERSUS

LAKE CHARLES PILOTS, INC.

Defendants-Respondents

On supervisory writ from the Thirty-Eighth Judicial District Court, in and for the Parish of Cameron, State of Louisiana, the Honorable H. Ward Fontenot, Judge, presiding.

ORDER

All proceedings in this case are stayed pending further action of this court. The Clerk of the Thirty-Eighth Judicial District Court, Parish of Cameron is hereby ordered to forward to this Court within 45 days the complete record in these proceedings to date.

Pursuant to the Supreme Court of Louisiana's order dated September 15, 2000, the relator, Hubern Doxey, is hereby given 25 days in which to file any additional briefs, if desired. The respondent, Lake Charles Pilots, Inc., is hereby given 45 days in which to file any opposition briefs, if desired.

This matter will be set for oral argument, if requested within 14 days, and all parties will be notified.

SEP 28 2000
Lake Charles, La.

/s/ Charles K. McNeely

CHARLES K. McNEELY
Chief Deputy Clerk
For the Court

APPENDIX D

The Supreme Court of the State of Louisiana

NO. 2000-CC-1688

HUBERN DOXEY

VS.

LAKE CHARLES PILOTS, INC.

IN RE: Lake Charles Pilots, Inc. ; – Def
Supervisory and/or Remedial Writs, P
Judicial District Court Div. O, Nos. 1
Appeal, Third Circuit, No. CW 00 00

September 15, 2000

Granted and remanded to the court of appeal for briefing, argument and opinion.

HTL
PFC
CDK
BJJ
JPV
CDT
JTK

Supreme Court of Louisiana
September 15, 2000

/s/ Katherine A. Fontana
Deputy
Clerk of Court
For the Court

APPENDIX E

STATE OF LOUISIANA
COURT OF APPEAL, THIRD CIRCUIT
P.O. Box 16577
Lake Charles, LA 70616
(337) 433-9403

NO: CW 00 00530

HUBERN DOXEY

VERSUS

LAKE CHARLES PILOTS, INC.

On application of Hubern Doxey for SUPERVISORY WRIT in No. 10-15398 on the docket of the Thirty-Eighth Judicial District, Parish of Cameron, Judge H. Ward Fontenot.

J.B. Jones, III	Counsel for: Hubern Doxey
Kenneth Michael Wright	Counsel for: Lake Charles Pilots, Inc.

Lake Charles, Louisiana, this 17th day of May, 2000.

WRIT GRANTED. The trial court erred in ruling that the plaintiff-relator could not meet the jurisdictional limit for a jury trial on the grounds that punitive damages are unavailable under general maritime law. *See Strawder v. Zapata Haynie Corp.*, 94-453, 94-454 (La. App. 3Cir. 11/2/94); 649 So.2d 554. As such, we reverse the ruling of the trial court and remand the case for further proceedings consistent with this order.

/s/ S.R.C.	/s/ J.C.P.	/s/ G.B.G.
S.R.C.	J.C.P.	G.B.G.

APPENDIX F

HUBERN DOXEY	38TH JUDICIAL DISTRICT COURT
VS. NO. 10-15398	
LAKE CHARLES PILOTS, INC.	PARISH OF CAMERON
	STATE OF LOUISIANA
FILED: _____	_____
	DEPUTY CLERK OF COURT

RECEIVED & FILED
'00 MAR 16 PM 1 25
CLERK OF COURT
CAMERON PARISH, LA.

ORDER

This matter comes before the Court on Plaintiff, HUBERN DOXEY'S Motion For An Order of Jury Trial, pursuant to regular assignment on February 14, 2000. Present: KENNETH MICHAEL WRIGHT, Attorney for Defendant Lake Charles Pilots, Inc., and JENNINGS BRYAN JONES, III, Attorney for Plaintiff, Hubern Doxey. The Court after considering the evidence and the arguments of counsel and for the reasons this day orally assigned.

IT IS ORDERED, ADJUDGED AND DECIDED that Plaintiff, HUBERN DOXEY'S MOTION FOR AN ORDER OF JURY TRIAL is Denied, as Plaintiff is not entitled to a trial by jury.

JUDGMENT RENDERED in Open Court in the Parish of Cameron at Cameron, Louisiana on February 14, 2000.

JUDGMENT SIGNED in Cameron, in the Parish of Cameron at Cameron, Louisiana on this 15th day of March, 2000.

/s/ H. Ward Fontenot
HONORABLE H. WARD FONTENOT
38th Judicial District Court, Cameron Parish

APPROVED AS TO FORM AND SUBSTANCE:

/s/ Kenneth Michael Wright
KENNETH MICHAEL WRIGHT
Attorney for Lake Charles Pilots, Inc.

/s/ J.B. Jones III
JENNINGS BRYAN JONES, III
Attorney for Hubern Doxey

APPENDIX G

Division –
HON H WARD FONTENOT – 1

Monday, February 14, 2000

MINUTES OF COURT
THIRTY-EIGHTH JUDICIAL DISTRICT COURT
CAMERON PARISH, LOUISIANA

COURT MET WITH HONORABLE H WARD FONTENOT, DISTRICT JUDGE PRESIDING WITH RENEE PARSLEY, COURT REPORTER, GEORGE KELLEY, DEPUTY SHERIFF AND RECIA WILLIS, DEPUTY CLERK OF COURT IN ATTENDANCE.

1015398 HUBERN DOXEY
VS
LAKE CHARLES PILOTS INC

MATTER CAME UP FOR RULE ON ORDER OF JURY TRIAL

PRESENT: BRYAN JONES FOR PLAINTIFF
KENNETH MICHAEL WRIGHT FOR DEFENDANT

WRIGHT MAKE ARGUMENTS & STATES THAT CLAIM IS NOT OVER $50,000 FOR JURY TRIAL ON PROPERTY DAMAGE & LOST OF INCOME;

JONES STATES HE ALSO MADE CLAIM FOR PUNITIVE DAMAGES & ARGUES FROM CASES; COURT ASK ABOUT GENERAL ADMIRALTY LAW IF YOU CAN ASK FOR PUNITIVE DAMAGES; COURT RECESSES COURT FOR JONES TO FIND CASE HE ARGUED TO COURT; COURT RESUMES & STATES RECESS WAS USED TO

EXAMINE SOME AUTHORITY CONCERNING THIS CASE

COURT DOES NOT RECOGNIZE PUNITIVE DAMAGES FOR GENERAL ADMIRALTY LAW WRIGHT OBJECTS; COURT SUSTAINS OBJECTION & NOTES

WRIGHT AS COURT TO OFFERS THE DEPOSITION OF HUBERN DOXEY TO COURT; COURT WILL LEAVE RECORD OPEN; BRYAN ENTERS OBJECTION THAT HE BELIEVES UNDER GENERAL ADMIRALTY LAW THERE IS PUNITIVE DAMAGES; COURT ORDERS WRIGHT TO DRAFT ORDER WITH EXHIBIT LEFT OPEN & WILL SIGN UPON PRESENTATION.

COURT ADJOURNED UNTIL: FEBRUARY 16, 2000

_____
DEPUTY CLERK OF COURT

Approved:

/S/ H WARD FONTENOT
DISTRICT JUDGE

A TRUE COPY OF THE MINUTE ENTRY

/s/ Debbie Savau
DEPUTY CLERK OF COURT
CAMERON PARISH, LOUISIANA

Supreme Court, U.S.
FILED
AUG 2001

No. 01-217

IN THE

Supreme Court of the United States

LAKE CHARLES PILOTS, INC.,

Petitioner,

v.

HUBERN DOXEY,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE COURT OF APPEAL OF LOUISIANA, THIRD CIRCUIT

BRIEF IN OPPOSITION

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QUESTION PRESENTED FOR REVIEW

Respondent is a nonseafarer whose claim is based on the general maritime law. Respondent is not, as Petitioner states, "seeking relief under the Admiralty Extension Act." The Admiralty Extension Act provides the basis for maritime jurisdiction in this case, but does not provide Respondent with a cause of action. Pecuniary damages sought by Respondent include not only property damage and mental anguish resulting from property damage, as stated by Petitioner, but also economic loss as a result of being able to pursue his chosen profession due to loss of his property. The issue presented for review in this case is whether punitive damages are available to the Respondent in this case.

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STATEMENT OF THE CASE

Respondent offers the following corrections to the Statement of the Case provided by Petitioner. Respondent's claim was originally filed in the 38th Judicial District Court for the Parish of Cameron, State of Louisiana, not the 39th Louisiana Judicial District Court, as stated by Petitioner. Respondent did not, as stated by Petitioner, testify that his *general* damages did not exceed $25,000, but rather Respondent's testimony indicated that his *pecuniary* damages probably totaled less than $25,000.

REASONS FOR DENYING THE WRIT

I. PUNITIVE DAMAGES HAVE BEEN A WELL-RECOGNIZED REMEDY OF THE GENERAL MARITIME LAW, EVEN PRIOR TO PASSAGE OF THE JONES ACT (46 U.S.C. § 688) IN 1920.

Even in the nineteenth century, punitive or exemplary damages were recognized as an available form of relief to admiralty claimants. Justice Story, in particular, was a proponent of the authority of the court sitting in admiralty to impose punitive damages in cases of gross misconduct. According to Professor Robertson, Justice Story wrote seven opinions affirming this principle, four in the Supreme Court and three decided while sitting as a circuit judge. David W. Robertson, *Punitive Damages in American Maritime Law*, 28 J. Mar. L. & Com. 73, 95 (1997), citing *The Amiable Nancy*, 16 U.S. (3 Wheat.) 546, 558 (1818); *La Amistad De Rues*, 18 U.S. (5 Wheat.) 385, 389 (1820); *The Apollon*, 22 U.S. (9 Wheat.) 362, 374 (1824); *The Palmyra*, 25 U.S. (12 Wheat.) 1, 15 (1827); *Chamberlain v. Chandler*, 5 F.Cas. 413 (C.C.D. Mass. 1823) (No. 2,575); *Sherwood v. Hall*,

21 F.Cas. 1292 (C.C.D. Mass. 1837) (No. 12,777); and *The Lively*, 15 F.Cas. 631 (C.C.D. Mass. 1812) (No. 8,403). Prior to 1850, twenty-five federal decisions recognized the availability of punitive damages under the general maritime law. Robertson, *supra*, at 88. And between 1850 and the passage of the Jones Act in 1920, thirty-four more federal cases were reported expressing approval of maritime punitive damages. *Id.*, at 99. It is particularly noteworthy for purposes of the case sub judice that five of these decisions were property damage cases. *Id.*, at 114-15, n.216, citing *The Eliza Lines*, 102 F. 184 (C.C.D. Mass. 1900), *reversed on other grounds*, 199 U.S. 119 (1905); *The Mascotte*, 72 F. 684 (D.N.J. 1895); *Paterson v. Dakin*, 31 F. 682 (S.D. Ala. 1887); *Gould v. United States*, 46 Ct. Cl. 214 (1911); and *Hooper v. United States*, 22 Ct. Cl. 408 (1887).

Subsequent to the passage of the Jones Act, modern admiralty courts continued to award punitive damages, and even developed a *greater* willingness to award these damages in *property damage claims*, as opposed to personal injury claims. Robertson, *supra*, at 137, citing *The Dredge General*, 1944 AMC 948 (S.D. Fla. 1944); *Protectus Alpha Nav. Co. v. North Pac. Grain Growers, Inc.*, 767 F.2d 1379, 1986 AMC 56 (9th Cir. 1985); *Thyssen, Inc. v. S.S. Fortune Star*, 777 F.2d 57, 1986 AMC 1318 (2d Cir. 1985); *Cruickshank & Co. v. Sorros*, 765 F.2d 20, 1986 AMC 381 (2d Cir. 1985); *Serguros Banvenez, S.A. v. S/S Oliver Drescher*, 761 F.2d 855, 1985 AMC 2168 (2d Cir. 1985); and *Armada Supply v. S/T Agios Nikolas*, 639 F. Supp. 1161 (S.D.N.Y. 1986).

II. THE HOLDING OF *MILES v. APEX MARINE CORP.*

Mercedel Miles was the mother of Ludwick Torregano, a Jones Act seaman who was murdered by a fellow crew member aboard the vessel M/V ARCHON. Mrs. Miles, as administratrix of her son's estate, brought an action in the United States District Court for the Eastern District of Louisiana against the vessel's owner and operator (collectively referred to as "Apex"). Her Jones Act claim alleged negligence for failure to prevent the attack on her son. She also brought an action under the general maritime law for breach of the warranty of seaworthiness (based on the hiring of an unfit crew member). She sought damages including loss of support and services, loss of society, punitive damages, and compensation to her son's estate for his pre-death pain and suffering, as well as his lost future income.

The district court struck Mrs. Miles' claims for punitive damages and lost future income, and instructed the jury that the plaintiff could not recover loss of society damages if she was not financially dependent on her son. The jury found Apex negligent, Torregano contributorily negligent, and the vessel seaworthy. Damages were awarded to Mrs. Miles for loss of support and services, and the estate was awarded damages for Torregano's pain and suffering. No award for loss of society was made, as the jury determined Mrs. Miles was not financially dependent on her son. On appeal, the United States Court of Appeals for the Fifth Circuit affirmed the finding of negligence on the part of Apex and reversed the jury's finding of contributory negligence. *Miles v. Apex Marine Corp.*, 882 F.2d 976, 983-85. The Court of Appeals also held that the M/V ARCHON was unseaworthy as a matter

of law, but that the general maritime law did not permit recovery for loss of society by a nondependent parent, or a survival action for lost future earnings. *Id.*, at 983, 987, 989. As to the Respondent's claim for punitive damages, the Fifth Circuit affirmed the availability of punitive damages under the general maritime law "upon a showing of willful and wanton misconduct by the shipowner in failing to provide a seaworthy vessel," but found that punitive damages were not justified by the facts of the case. *Id.*, at 989 citing *Protectus Alpha Navigation Co.*, 767 F.2d at 1386. This Court granted writs of certiorari. 494 U.S. 1003, 110 S. Ct. 1295, 108 L. Ed. 2d 472 (1990).

The Court began its opinion by affirming the holding of *Moragne v. States Marine Lines, Inc.*, 398 U.S. 375, 90 S. Ct. 1772, 26 L. Ed. 2d 339 (1970), recognizing a cause of action under the general maritime law for wrongful death. As per Justice O'Conner, the Court noted:

> We have described *Moragne* at length because it exemplifies the fundamental principles that guide our decision in this case. We no longer live in an era when seamen and their loved ones must look primarily to the courts as a source of substantive legal protection from injury and death; Congress and the States have legislated extensively in these areas. In this era, an admiralty court should look primarily to these legislative enactments for policy guidance. We may supplement these statutory remedies where doing so would achieve the uniform vindication of such policies consistent with our constitutional mandate, but we must also keep strictly within the limits imposed by Congress. Congress retains

> superior authority in these matters, and an admiralty court must be vigilant not to overstep the well-considered boundaries imposed by federal legislation. These statutes both direct and delimit our actions.

Miles v. Apex Marine Corp., 498 U.S. 19, 27, 111 S. Ct. 317, 323, 112 L. Ed. 2d 275 (1990).

The Court declined Apex's invitation to limit *Moragne* to its facts, which involved the death of a longshoreman, and held that there was indeed a wrongful death cause of action under the general maritime law for a Jones Act seaman as well as for a longshoreman. *Id.*, at 30, 111 S. Ct. at 324.

This Court went on to address the issue of what damages could be recovered in a wrongful death action under the general maritime law. In *Mobil Oil Corp. v. Higginbotham*, 436 U.S. 618, 98 S. Ct. 2010, 56 L. Ed. 2d 581 (1978), the Court held that the general maritime law could not provide for recovery of nonpecuniary losses when the death occurred on the high seas, because the DOHSA limited recovery to pecuniary loss only. *Because Congress had directly addressed the issue of recoverable damages*, the general maritime law could not "supplement" the relief provided by Congress. *Id.*, at 625, 98 S. Ct. 2015. However, the general maritime law *could* provide for the recovery of nonpecuniary damages in a situation where Congress had *not* proscribed the available remedies. In so concluding, the *Miles* court reaffirmed the holding of *Sea-Land Services, Inc. v. Gaudet*, 414 U.S. 573, 94 S. Ct. 806, 39 L. Ed. 2d 9 (1974), providing that nonpecuniary damages could be recovered by the widow of a longshoreman who died in territorial waters. The *Gaudet*

decision addressed a factual scenario not covered by either the Jones Act or DOHSA. *Miles*, 498 U.S. at 30-31, 111 S. Ct. at 324-25.

Finding that the Jones Act precluded recovery for loss of society in a wrongful death case, the Court concluded that such damages must also be unavailable in a claim for the wrongful death of a Jones Act seaman brought under the general maritime law. In so doing, the Court implemented a uniform rule applicable to all actions for the wrongful death of a seaman, whether such claims were brought pursuant to DOHSA, the Jones Act, or the general maritime law. *Id.*, at 33, 111 S. Ct. at 326. The Court declined to address the question of whether the general maritime law provides a survival action, finding that lost future income was not a recoverable item of damages in a survival action brought under the Jones Act. Therefore, the Court held such damages could not be recovered in a Jones Act seaman's wrongful death action under the general maritime law. *Id.*, at 36, 111 S. Ct. at 328.

The rationale of this Court's opinion is clear. Punitive damages were not discussed in the opinion, but the opinion of the Fifth Circuit holding that such damages were recoverable under the general maritime law was affirmed. *See* Stephen K. Carr, *Living and Dying in the Post*-Miles *World: A Review of Compensatory and Punitive Damages Following Miles v. Apex Marine Corp.*, 68 Tul. L. Rev. 595, 617 (1994). The holding is based on deference to Congressional enactments providing certain forms of relief to certain classes of claimants. Consequently, as the Louisiana Third Circuit Court of Appeal held in this case, if there are no Congressional enactments providing relief to claimants such as Mr. Doxey, the holding of *Miles* is inapplicable.

The *Miles* opinion makes no mention of punitive damages, nor does it give any indication that it is applicable to any factual scenario not covered by the Jones Act or the DOHSA. Arguably, the existence of other federal statutes proscribing certain forms of relief in other maritime actions might be affected by the Court's opinion in *Miles*. However, there is no dispute in this case that *there is no applicable federal or state statute providing relief to Mr. Doxey*. His sole basis for relief is pursuant to the general maritime law.

III. RECENT CASES RECOGNIZE THE CONTINUED AVAILABILITY OF PUNITIVE DAMAGES UNDER THE GENERAL MARITIME LAW FOR CASES INVOLVING NONSEAFARERS.

Writing in 1997, more than six years after this Court's decision in *Miles*, Professor Robertson could locate *no property damage case denying the availability of punitive damages under the general maritime law*. David W. Robertson, *Punitive Damages in American Maritime Law*, 28 J. Mar. L. & Com. 73, 160. Professor Robertson cited several maritime property damages cases rendered subsequent to *Miles* holding that punitive damages were a recoverable item of damages under the general maritime law including *Gamma-10 Plastics, Inc. v. American President Line, Ltd.*, 32 F.3d 1244, 1257, 1995 AMC 909 (8th Cir. 1994), *cert. denied*, 513 U.S. 1198, 115 S. Ct. 1270, 131 L. Ed. 2d 148 (1995); *Jones v. Compagnie Generale Maritime*, 882 F. Supp. 1079, 1083-85, 1995 AMC 2573 (S.D. Ga. 1995); *Leather's Best Int'l Inc. v. M/V Lloyd Sergipe*, 760 F. Supp. 301, 313, 1991 AMC 1929 (S.D.N.Y. 1991); *Hudson River Cruises, Inc. v. Bridgeport Drydock Corp.*, 892 F. Supp. 380, 386 (D. Conn. 1994); and *CEH*

Inc. v. F/V Seafarer, 70 F.3d 694 (1st Cir. 1995). Other more recent property damage cases are discussed, *infra*, including *Maritrans Operating Partners v. DIANA T, M/V*, 1999 WL 127250 (E.D. La.) and *BP Exploration & Oil, Inc. v. Moran Mid-Atlantic Corp.*, 147 F. Supp. 2d 333 (D.N.J. 2001).

The inapplicability of *Miles* and *Guevara v. Maritime Overseas Corp.*, 59 F.3d 1496 (5th Cir. 1995), was specifically addressed by the United States First Circuit Court of Appeal in *CEH, Inc. v. F/V Seafarer*, 70 F.3d 694 (1st Cir. 1995). In *Guevara*, the Fifth Circuit held that punitive damages were no longer available for willful nonpayment of maintenance and cure to a Jones Act seaman. In *CEH*, the First Circuit affirmed an award of punitive damages against the owner and captain of a trawler vessel that deliberately destroyed plaintiffs' lobster traps. The court reasoned that *Guevara* merely illustrated that *Miles* may be applicable in those areas of maritime law where there is an overlap between statutory and decisional law. However, in this property damage case, there was no legislation addressing the circumstances involving reckless destruction of property. In the absence of any relevant legislation, the uniformity principle expressed in *Miles* was inapplicable. Therefore, the plaintiffs were entitled to forms of relief traditionally available under the general maritime law, including punitive damages. *Id.*, at 699-702.

In support of the contention that punitive damages are not available for general maritime law claims, Petitioner Lake Charles Pilots asserts that the majority of cases arising from the Eastern District of Louisiana would disallow recovery for punitive damages under the general maritime law. *See* Petitioner's Brief in Support of Petition for Writ of

Certiorari, pp. 5-6. Petitioner cites eighteen cases in support of this statement.[1] Of these eighteen cases, five actually *permit* the recovery of punitive damages in general maritime law claims, *Davis v. Penrod Drilling Corp.*, 1991 WL 264541 (E.D. La.); *Hannon v. Waterman Steamship Corp.*, 1991 WL 278996 (E.D. La.); *Logue v. Tidewater, Inc.*, 1992 WL 59409 (E.D. La.); *Rutherford v. Mallard Bay Drilling, L.L.C.*, 2000 WL 805230 (E.D. La.); and *Tate v. Zapata Gulf Marine Construction*, 1993 WL 346190 (E.D. La.). And of the remaining thirteen cases, *only four* do not involve the claims of Jones Act seamen, *Baker v. Wilrig (U.S.A.), Inc.*, 1992 WL 236926 (E.D. La.); *Bardwell v. George G. Sharp, Inc.*, 1995 WL 517120 (E.D. La.); *Hayden Acadian Gas Pipeline Systems TXO*, 1997 WL 382059 (E.D. La.); and *Williams v. Texaco, Inc.*, 1997 WL 250009 (E.D. La.). Moreover, Petitioner fails to mention *seven* other cases from the Eastern District, and one from the Western District, all rendered since *Miles*, all affirming the continued availability of general maritime law punitive damages claims. *See Rebstock v. Sonat Offshore Drilling*, 764 F. Supp. 75 (E.D. La. 1991); *Duplantis v. Texaco, Inc.*, 771 F. Supp. 787 (E.D. La. 1991); *Kartofilis v. Louis Dreyfus Corp.*, 1993 WL 483576 (E.D. La.); *Maritrans Operating Partners v. DIANA T, M/V*, 1999 WL 144458 (E.D. La.); *In the Matter of Denet Towing Service, Inc.*, 1999 WL 329698 (E.D. La.); *Liner v. Dravo Basic Material Company*, 2000 WL 1693678 (E.D. La.); *Moore v. M/V ANGELA*, 2001 WL 803743 (E.D. La.); and *Bergeron v. Atlantic Pacific Marine*, 899 F. Supp. 1544 (W.D. La. 1993). Respondent does not mean to imply that the issue presented to the Louisiana Third-

1. *Id.*, at p. 6 n.1. Although twenty cases are actually listed, two of these, *Anderson v. Texaco, Inc.*, 797 F. Supp. 531 (E.D. La. 1992), and *Donaghey v. Ocean Drilling & Exploration Co.*, 1991 WL 99490 (E.D. La. 1992), are cited twice.

Circuit Court of Appeal, the Louisiana Supreme Court, and this Court should be resolved by determining the number of decisions affirming or denying the rights of plaintiffs to recover punitive damages in general maritime law claims; this information is provided to correct any misconception which might arise from the cited portions of Petitioner's Brief.

The bulk of Petitioner's argument consists of a lengthy quotation from a single opinion of the United States District Court for the Eastern District of Louisiana, *In re Diamond B Marine Services, Inc.*, 2000 WL 222847 (E.D. La.). However, subsequent to Judge Schwartz's decision in that case, other opinions of the Eastern District and elsewhere have recognized the continued availability of punitive damages under the general maritime law. In *Liner v. Dravo Basic Material Company*, 2000 WL 1693678 (E.D. La.), the plaintiffs were operating a seventeen-foot recreational boat in Louisiana territorial waters when they struck a sunken barge. The action filed by the plaintiffs included claims for punitive damages and loss of consortium. Noting that the plaintiffs were not Jones Act seamen, "and are thus not covered by any of Congress' maritime statutes," Judge Barbier concluded that this Court's decision in *Miles* did not preclude their claim for punitive damages. *Id.*, at *3. The plaintiffs were allowed to supplement their maritime remedies with a claim for loss of consortium under Louisiana law. Further, the district court noted that "the current trend is that in certain limited circumstances (punitive) damages are allowable." *Id.*, at *4, citing *Rutherford v. Mallard Bay Drilling, L.L.C.*, 2000 WL 805230 (E.D. La.); *In the Matter of Denet Towing Service, Inc.*, 1999 WL 329698 (E.D. La.); and *Maritrans Operating Partners v. DIANA T, M/V*, 1999 WL 144458 (E.D. La.).

Rutherford v. Mallard Bay Drilling, L.L.C., 2000 WL 805230 (E.D. La.), cited by Judge Barbier in *Liner*, was also rendered subsequent to Judge Schwartz's opinion in *In re Diamond B Marine Services, Inc.*, 2000 WL 222847 (E.D. La.). In *Rutherford*, the plaintiff was working as a floor hand on an inland drilling barge at the time of his injury. He brought an action pursuant to 33 U.S.C. § 905(b) of the Longshore and Harbor Workers' Compensation Act and the general maritime law, seeking compensatory and punitive damages against his employer, in the employer's capacity as owner of the drilling rig vessel.[2] The defendant employer contended that plaintiff was not entitled to punitive damages under the general maritime law, but the district court held that the plaintiff's cause of action under the general maritime law was based on nonstatutory negligence principles. *Id.*, at *2. Therefore, the uniformity principles enunciated in *Miles* and *Guevara* did not preclude an award of punitive damages. The district court noted that the United States Fifth Circuit Court of Appeal had recognized the continued viability of this Court's decision in *Sea-Land Services, Inc. v. Gaudet*, 414 U.S. 573, 94 S. Ct. 806, 39 L. Ed. 2d 9 (1974), in *Randall v. Chevron, U.S.A., Inc.*, 13 F.3d 888 (5th Cir. 1994), *opinion modified on denial of rehearing by*, 22 F.3d 568, 1994 AMC 2492 (5th Cir. 1994),[3]

2. Under Section 905(b) of the LHWCA, an employee is not precluded by the exclusive remedy provisions of the Act from bringing a claim against his employer for vessel negligence, if his employer is also the owner of the vessel on which he is injured.

3. Interestingly, on denial of rehearing, the Fifth Circuit deleted the following footnote from its original opinion:

> FN6. The limitation of the *Gaudet* rule to longshoremen injured in state territorial waters has been scrupulously observed. *See Robertson v. Arco Oil and Gas Co.*, 766

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cert. dismissed sub nom. Sea Savage, Inc. v. Chevron U.S.A., Inc., 512 U.S. 1265, 115 S. Ct. 5, 129 L. Ed. 2d 906 (1994), *cert. denied sub nom., Sea Savage, Inc. v. Chevron U.S.A., Inc.*, and *Chevron U.S.A., Inc. v. Sea Savage, Inc.*, 513 U.S. 994, 115 S. Ct. 498, 130 L. Ed. 2d 408 (1994) and *Nichols v. Petroleum Helicopters, Inc.*, 17 F.3d 119, 122-23 (5th Cir. 1995). Therefore, the "effective" overruling of *In re Merry Shipping, Inc.*, 650 F.2d 622 (5th Cir. 1981), in *Guevara* had no application to a non-Jones Act case. Instead, the Fifth Circuit has recognized that *Guevara* left open the possibility of recovery of punitive damages in certain maritime scenarios in its opinion in *Galveston County Navigation Dist. No. 1 v. Hopson Towing Co.*, 92 F.3d 353, 358, at n.12 (5th Cir. 1996). The rationale of the *Rutherford* decision clearly indicates that Petitioner Lake Charles Pilots' assertion that *Miles* and *Guevara* have eliminated the possibility of recovery of punitive damages in all types of admiralty cases is not a correct statement of the law. In truth, the Fifth Circuit has *never* held that punitive damages are unavailable under the general maritime law in a case not involving the Jones Act or the Death on the High Seas Act.

As noted, the two other cases cited by Judge Barbier in *Liner* in support of his conclusion that the current trend in maritime law is recognition of the continued availability of punitive damages were *In the Matter of Denet Towing Serv., Inc.*, 1999 WL 329698 (E.D. La.) and *Maritrans Operating Partners v. DIANA T. M/V*, 1999 WL 144458 (E.D. La.).

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F. Supp. 535, 539 (W.D. La. 1991) (holding that a dependent of a longshoreman injured on the outer continental shelf rather than in state territorial waters may not recover damages for loss of the longshoreman's consortium), *aff'd* 948 F.2d 132 (5th Cir. 1991).

In *Denet Towing*, the personal representative of a Jones Act seaman brought a claim against a third party defendant (not his employer), seeking a variety of nonpecuniary damages, including punitive damages. Denying summary judgment as to the claim for punitive damages, Judge Lemmon held:

> The Fifth Circuit has held punitive damages to be barred in some circumstances as "non-pecuniary." *Guevara*, 59 F.3d at 1506, n.7. *See also In Re Waterman Steamship Corp.*, 780 F. Supp. 1093 (E.D.La. 1992); 1 Schoenbaum 5-17 (Supp. 1997); and Robertson, 28 J. Mar. L. & Com. at 147-50. However, *Guevara* concerned only punitive damages for the employer's failure to pay maintenance and cure; the court had no need to address other grounds for allowing punitive damages. After characterizing punitive damages as non-pecuniary, and after identifying an "overlap" between the maintenance and cure action and the Jones Act, the court applied *Miles* broadly to disallow them. *Guevara*, 59 F.3d at 1506-7, 1510-12.
>
> However, despite post-*Miles* turmoil, punitive damages are awardable generally to maritime tort victims where sufficiently egregious conduct is proved, because, "there is no indication in *Miles* of disapproval of the long line of cases allowing punitive damages under the general maritime law." 1 Schoenbaum, 5-17, at p. 214. Specifically, punitive damages are available to seamen in "general maritime law claims for negligence where the Jones Act is not involved" (i.e., because

there is not a statutory overlap). 1 Schoenbaum 5-17, at p. 214 (citing *Massa*, 802 F. Supp. 84). (FN10)

> FN10. Before *Miles*, punitive damages were generally available in personal injury or death cases where the defendant's conduct was especially egregious. *In re Cameron Boat Rentals, Inc.*, 683 F. Supp. 577, 586 (W.D. La. 1989); *In re Merry Shipping, Inc.*, 650 F.2d 622, 626 (5th Cir. 1981); *Churchill v. F/V Fjord*, 892 F.2d 763 (9th Cir. 1988); *United States Steel Corp. v. Fuhrman*, 407 F.2d 1143, 1148 (6th Cir. 1969); *Evich v. Morris*, 819 F.2d 256, 257-58 (9th Cir. 1987). *See also* Robertson, 28 J. Mar. L. & Com. at 133. *See also* Thomas J. Schoenbaum, *Admiralty and Maritime Law*, 5-17, pp. 212-215 (1994 & Supp. 1997).

Like the case sub judice, *Maritrans Operating Partners v. DIANA T, M/V*, 1999 WL 144458 (E.D. La.), was a maritime claim for property damage. The plaintiff sought punitive damages, contending that the damage to its vessel occurred because the defendant's captain was operating the DIANA T while under the influence of marijuana, and because the defendant shipowner failed to properly screen its employees for drug use. The defendant shipowner argued that, after *Miles* and *Guevara*, punitive damages were no longer available under the general maritime law. However, the court disagreed, holding that "without an overlap between the Jones Act and the general maritime law invoked by the plaintiff, *Guevara* and *Miles* simply do not apply." *Id.*, at *7.

Other very recent decisions have affirmed the continued availability of punitive damages under the general maritime law in cases not involving Jones Act seamen. For example, in *Norwalk Cove Marina, Inc. v. S/V Odysseus*, 90 F. Supp. 2d 190 (D. Conn. 2000), the court held that admiralty law was applicable to the plaintiff's claim for breach of contract and fraud, and that punitive damages were recoverable in maritime tort actions wherein a defendant's actions are "intentional, deliberate, grossly negligent, or so wanton and reckless as to demonstrate a conscious disregard for the rights of others." *Id.*, at 193.

In re Horizon Cruises Litigation, 101 F. Supp. 2d 204 (S.D.N.Y. 2000), was an action brought by cruise line passengers who contracted Legionnaires' Disease while aboard ship. Claims for negligence, fraud and breach of contract were brought against the operator of the cruise line. Plaintiffs also brought products liability claims against the manufacturer of a filter used in the whirlpool spa system aboard the vessel, which was alleged to be the place where the disease originated. Some plaintiffs filed a motion to add claims for punitive damages, which were opposed by the defendants. Defendants contended that all claims were governed by admiralty law, which disallowed any claim for punitive damages.

The court agreed that maritime law governed all plaintiffs' claims, but disagreed with the argument that punitive damages were unavailable. Discussing in great detail the history of punitive damages in admiralty, the court noted that punitive damages had been awarded to passengers in maritime cases as early as 1823. *Id.*, at 210, citing *Chamberlain v. Chandler*, 5 F.Cas. 413 (C.C.D. Mass. 1823). Moreover, from the early nineteenth century, maritime

jurisprudence recognized the availability of punitive damages in other types of admiralty cases. *See* cases cited at 101 F. Supp. 2d 210-11. The court noted that although the *Miles* decision resulted in abrogation of a Jones Act seaman's right to claim punitive damages under the general maritime law in a wrongful death claim against his employer, this Court's later decision in *Yamaha Motor Corp., U.S.A. v. Calhoun*, 516 U.S. 1999, 116 S. Ct. 619, 133 L. Ed. 2d 578 (1996), "sheds new light on *Miles*." 101 F. Supp. 2d at 212. In *Yamaha,* this Court held that the desire for uniformity in the maritime law did not preclude the availability of state law remedies for the wrongful deaths of nonseafarers occurring in territorial waters. The result is that *Miles* does not enunciate an absolute bar to recovery of punitive damages in all general maritime cases. *Id.*, at 213. In passing the Jones Act, "Congress was expanding the relief available to maritime workers; it gave no hint that it was implicitly repealing the remedies that had traditionally been available to nonseamen." *Id.*, at 214. Allowing the plaintiffs' claims for punitive damages, the court concluded:

> (T)hese anomalies are an artifact of the interaction between general maritime law and the succession of specific congressional enactments. Their existence does not justify using legislation intended to expand remedies for one set of plaintiffs as a means for contracting remedies otherwise available to a different group of plaintiffs whose circumstances have not been addressed by Congress. *Yamaha* now makes it clear that principles of uniformity do not reach so broadly.

Id.

A New Jersey district court recently recognized the continued availability of punitive damages in maritime property damage cases in *BP Exploration & Oil, Inc. v. Moran Mid-Atlantic Corp.*, 147 F. Supp. 2d 333, 344-45 (D.N.J. 2001), citing *Churchill v. F/V Fjord*, 892 F.2d 763 (9th Cir. 1988); *The Amiable Nancy*, 16 U.S. (3 Wheat.) 546 (1818); *Leather's Best Int'l, Inc. v. M/V Lloyd Sergipe*, 760 F. Supp. 301, 1991 AMC 1929 (S.D. Ga. 1995); *CEH, Inc. v. F/V Seafarer*, 70 F.3d 694 (1st Cir. 1995); *Self v. Great Lakes Dredge & Dock Co.*, 832 F.2d 1540, 1550 (11th Cir. 1987); and *Bergen v. F/V Patrick*, 816 F.2d 1345, 1347-48 (9th Cir. 1987). *See also In re Air Crash Off Point Mugu, California on January 30, 2000*, 145 F. Supp. 2d 1156, 1166 (N.D. Cal. 2001) (acknowledging the availability of punitive damages in maritime wrongful death and survivor actions brought by the beneficiaries of nonseafarers).

In further support of the contention that the recent trend in maritime law is recognition of the continued viability of a punitive damage claim brought by a non-Jones Act seaman, Respondent Doxey refers the Court to *Poe v. PPG Industries*, 2000-1141 (La. App. 3 Cir. 3/28/01, 782 So. 2d 1168, *writ denied*, 2001-1239 (La. 6/22/01), __ So. 2d __, 2001 WL 761287 (La. Jun. 22, 2001) (No. 2001-C-1239). Plaintiffs were commercial fishermen who brought a claim against the operator of a chemical plant, its employees and insurers, for damages resulting from pollution of their fishing grounds. The trial court granted a cross-motion for summary judgment in favor of the fishermen, holding that punitive damages were still available under the general maritime law subsequent to this Court's decision in *Miles*.[4] The defendants argued on

4. Plaintiffs' motion was directed only to the *availability* of such a remedy under the general maritime law; not to the issue of whether punitive damages should be awarded on the facts of this particular case.

appeal that this Court's decision in *Miles* and the opinion of the Fifth Circuit in *Guevara* rendered punitive damages unavailable to the fishermen plaintiffs as a matter of law. The Third Circuit, as per Judge Thibodeaux, began by noting that *Miles* made no reference to punitive damages. Rather, this Court held that since loss of society damages were not recoverable under the Jones Act, such damages were unavailable under a general maritime law claim for unseaworthiness brought by a nondependent parent of a Jones Act seaman. The goal of the *Miles* Court, according to Judge Thibodeaux, was to achieve uniformity in cases brought under the general maritime law where Congress has provided an applicable scheme of recovery, such as the Jones Act or DOHSA. As the court noted, "*Miles,* therefore, does not . . . signify a call for universal uniformity of maritime tort remedy, but rather emphasizes the importance of uniformity in the face of applicable *relevant* legislation." 782 So. 2d at 1173.

The Third Circuit went on to recognize that punitive damages, though rarely imposed, have long been available in maritime actions, even prior to passage of the Jones Act. *Id.*, citing *The Amiable Nancy*, 16 U.S. (3 Wheat.) 546 (1818); *Muratore v. M/S Scotia Prince*, 845 F.2d 347 (1st Cir. 1988); *Protectus Alpha Navigation Co. v. North Pac. Grain Growers*, 767 F.2d 1379, 1986 AMC 56 (9th Cir. 1985). Moreover, the basis of the Fifth Circuit's holding in *Guevara* precluding the recovery of punitive damages for failure to provide a Jones Act seaman with maintenance and cure was the potential statutory/general maritime law overlap in the factual circumstances giving rise to the claim. Therefore, *Guevara* does not support the contention that punitive damages are never available in general maritime law claims, but "merely illustrates that *Miles* may be applicable in those

areas of maritime law where, at the very least, there is an overlap between statutory and decisional law." 782 So. 2d at 1174. Finding no statutory overlap present in the claim of the commercial fishermen, the court concluded that their claim for punitive damages remained viable.

> Absent statutory authority, courts in admiralty cases apply the general maritime law, a body of judge-made federal common law pertaining to admiralty. *East River S.S. Corp. v. Transamerica Delaval, Inc.*, 476 U.S. 858, 106 S. Ct. 2295, 90 L. Ed. 2d 865 (1986). "(C)ertainly it better becomes the humane and liberal character of proceedings in admiralty to give than to withhold the remedy, when not required to withhold it by established and inflexible rules." *Moragne v. States Marine Lines, Inc.*, 398 U.S. 375, 387, 90 S. Ct. 1772, 1781, 26 L. Ed. 2d 339 (1970). The only established rules against punitive damages are the limitations of the DOHSA and the Jones Act, neither of which is applicable to the facts of the present case. Thus, the decisions of *Miles* and *Guevara* do not act as legal impediments to the fishermen to seek punitive damages.

Id., at 1174.

IV. THE DECISION OF THE FIRST CIRCUIT COURT OF APPEALS IS NOT IN CONFLICT WITH THE FIFTH, NINTH AND ELEVENTH CIRCUITS.

In the final section of Petitioner Lake Charles Pilot's petition for certiorari, the argument is made that the decision of the United States First Circuit Court of Appeal in *CEH, Inc. v. F/V Seafarer*, 70 F.3d 694 (1st Cir. 1995), "is in conflict with the Fifth, Ninth and Eleventh Circuits." Petitioner's Brief in Support of Petition for Writ of Certiorari, p. 21. In support of this assertion, Petitioner Lake Charles Pilots merely sets forth a quotation from the court's opinion in *CEH* and concludes, "the First Circuit clearly points out the conflict among the circuits over the breadth of *Miles*." *Id.*, at p. 23. However, the cited portion of the *CEH* opinion makes no reference to any decision by the United States Eleventh Circuit Court of Appeal. The opinion does refer to the Fifth Circuit's opinion in *Guevara v. Maritime Overseas Corp.*, 59 F.3d 1496 (5th Cir. 1995), and the opinion of the Ninth Circuit in *Glynn v. Roy Al Boat Management Corp.*, 57 F.3d 1495 (9th Cir. 1995). In both these decisions, the Courts of Appeal held that a Jones Act seaman may not recover punitive damages for arbitrary and capricious failure to provide maintenance and cure. Respondent Doxey observes at the outset that the issue of whether *CEH* is or is not in conflict with other decisions of the federal courts of appeal is irrelevant to determination of whether a writ of certiorari should be granted in this case. In any event, the holdings of *Guevara* and *Glynn* present no conflict with either *CEH*, or the opinion of the Louisiana Court of Appeal for the Third Circuit in the case sub judice. In *CEH*, the court did not hold that *Guevara* was incorrectly decided, but distinguished *Guevara* and *Glynn* on the basis that these decisions "merely illustrate . . . that *Miles* may be applicable

in those areas of maritime law where, at the very least, there is an overlap between statutory and decisional law." 70 F.3d at 702. For the same reasons set forth by the Third Circuit in both *Doxey* and *Poe,* the First Circuit found these decisions, like *Miles* itself, simply inapplicable, because of the lack of statutory overlap presented in a case covered by neither the Jones Act or DOHSA. Respondent can only presume that the conflict with the Eleventh Circuit referenced by Petitioner in brief refers to *In re Amtrak "Sunset Ltd." Train Crash*, 121 F.3d 1421 (11th Cir. 1997), *cert. denied sub nom., Altosino v. Warrior & Gulf Navigation Co.*, 522 U.S. 1110, 118 S. Ct. 1041, 140 L. Ed. 2d 106 (1998), discussed at length in Petitioner's quotation from *In re: Diamond B Marine Services, Inc.* However, the Eleventh Circuit actually held in *Amtrak that the wrongful death beneficiaries of nonseamen could recover punitive damages under the general maritime law* upon a showing of intentional or wanton and reckless conduct. As authority for this conclusion, the Eleventh Circuit in *Amtrak* cited *CEH*. 121 F.3d at 1427-28. Moreover, the United States Eighth Circuit Court of Appeal has also recognized the continued availability of punitive damages under the general maritime law subsequent to this Court's decision in *Miles. See Gamma-10 Plastics, Inc. v. American President Line, Ltd.*, 32 F.3d 1244 (8th Cir. 1994), *cert. denied*, 513 U.S. 1188, 115 S. Ct. 1270, 131 L. Ed. 2d 148 (1995).

CONCLUSION

Petitioner has cited no case from this Court, any United States Court of Appeal, or the Louisiana Supreme Court, holding that punitive damages are unavailable under the general maritime law in all circumstances. In particular, Petitioner has cited no case from any jurisdiction holding that punitive damages are unavailable under the general maritime law in property damage cases. Indeed, as noted earlier, the United States Fifth Circuit has specifically recognized that, following *Miles* and *Guevara*, punitive damages may still be recoverable under the general maritime law. *Galveston County Navigation Dist. No. 1 v. Hopson Towing Co.*, 92 F.3d 353, 358 n.12 (5th Cir. 1996). Consequently, there is no basis whatsoever for Petitioner's assertion in brief that a conflict among the federal courts of appeal provides a basis for the granting of petition for writ of certiorari in this case.

The opinion of the Third Circuit Court of Appeal is well-reasoned and fully in accord with controlling legal precedent. The Court of Appeal's decision thoroughly discusses this Court's opinions in *Miles, Moragne,* and *Yamaha,* the federal appellate court opinions in *Guevara, CEH* and *Galveston County Navigation District No. 1*, and the federal district court opinions in *Liner* and *In re Horizon Cruises Litigation*. Based on these decisions, and the Third Circuit's own decision in *Strawder v. Zapata Haynie Corp.*, 94-453 (La. App. 3 Cir. 11/2/94), 649 So. 2d 554, the court evaluated the factual setting of the case and determined that no statutory remedial measures applied to the willful or reckless destruction of property. Since there was no applicable legislation limiting the damages available to the plaintiff, Doxey was entitled to make a claim for punitive damages,

a remedy traditionally available under the general maritime law. Because the court's analysis was entirely in keeping with the analytical framework provided by this Court in *Miles*, Petitioner's Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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